<u>Training of Trainers</u>

The Technique of Drafting Judgments
–
Part I: Civil Law Judgments

October 17-19, 2007

Bucharest, Romania

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Program

The Technique of Drafting Judgments
–
Part I: Civil Law Judgments

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Bucharest, Romania

Organisation and Concept:

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Wednesday, October 17, 2007

All day -	Arrival of participants
19.00 – 21.00	Opening Dinner Location: Caru cu Bere Restaurant 3-5 Stavropoleos Street, Bucharest Phone: +40 726 282 373

Thursday, October 18, 2007

08.45 – 09.00	Registration of participants
09.00 – 09.15	Welcome and opening speech *Dr. Stefanie Ricarda Roos, Director, Rule of Law Program South East Europe, Konrad-Adenauer-Stiftung*
09.15 – 09.25	Welcome from the part of the National Institute of Magistracy (INM) *Mihai Selegean, Director, National Institute of Magistracy*
09.25 – 09.45	Introduction of the trainers *Dragoş Dumitru, Deputy Director, National Institute of Magistracy* *Dr. Horst Proetel, International Senior Legal Expert, INM; Former Presiding Judge at the Supreme Court of Thueringia, Germany* *Viorel Voineag, Judge at the Bucharest Court of Appeals; INM trainer, Romania*
09.45 – 11.15	Module I: The Technique of Drafting Civil Law Judgments in Romania *Viorel Voineag*
11.15 – 11.30	Coffee break
11.30 – 13.30	Workshop I: The Romanian model *Viorel Voineag*
13.30 – 15.00	Lunch break

15.00 – 16.45 Module II: The Technique of Drafting Judgments: the German model.

Part I.
Dr. Horst Proetel

16.45 – 17.00 Coffee break

17.00 – 18.30 Workshop II: The German model
Dr. Horst Proetel

18.30 Closing of first day

19.30 – 21.30 Dinner
Location: Restaurant of Hotel Capitol
29 Calea Victoriei Street
Phone: +40-21-315 80 30

Friday, October 19, 2007

09.30 – 10.00 Summary of the previous day

10.00 – 10.15 Coffee break

10.15 – 12.30 The German model. Part II
Dr. Horst Proetel

12.30 – 14.00 Lunch break

14.00 – 16.00 Debates. Sharing experiences from the area. Elaboration of a set of recommendations regarding the technique of drafting civil law judgments.
Dr. Horst Proetel
Viorel Voineag

16.00 – 16.15 Coffee break

16.15 – 16.45 Conclusions.

19.30 – 21.30 Farewell Dinner
Location:
Museum Restaurant
15 Dr. Clunet Street
Phone: +40 21-411 91 28

Techniques of Writing Civil Law Judgments

by

Dr. Horst Proetel[1]

I. Introduction

1. a. The **judgment** is the usual decision of the court finalizing civil procedure (§§ 300 ZPO[2]). It will usually terminate the procedure at least in the current instance.
   b. The judgment will be spoken "**in the name of the people**" (§ 311 I ZPO). This heading characterizes the decision.
   c. The general remedy to challenge a judgment is the "**appeal**" (§§ 511 ff ZPO).

2. There are **other forms** in which the court can express its conclusion. These are:

   a. The **decision:** This is a general description of a court's statements. The usual response to the "**complaint**" (§§ 567 ff ZPO).
   b. The **court order**: This is a decision which often has only internal character and generally cannot be challenged.

3. **Different kinds of judgments.** Judgments generally follow four possible viewpoints:

   A. The scope of "***res iudicata***":

      1. **procedural judgment -** The final judgment addresses only the **grounds in which the claim is inadmissible** (i.e., being a party or another "*sub judice*").
      2. **substantial judgment** – This leads to "*res iudicata*" of the claim in its totality.

   B. The goal of the plaintiff:

[1] Presiding Judge, Supreme Court of Thueringia/Germany (retired); Senior International Legal Expert with the National Institute of Magistracy, Romania.
[2] German Civil Procedure Code (*Zivilprozessordnung – ZPO*).

1. **judgments which benefit the plaintiff**
2. **declaratory judgments**
3. **judgments which change a legal situation** (for instance: exclusion of a shareholder)

C. The way the judgment is produced:

1. Contradictory judgments occur when the court does not follow the (controversial) request of one involved party. The decisions will conclude an adversary oral hearing. Contradictory is sometimes termed an “untrue default judgment” (§ 331 II 2nd alternative).
2.**Non contradictory judgments** occur in:
a. the **recognition judgment (**§ 307 ZPO)
b. the (true) **default judgment** (§ 330 ff ZPO)
c. the **renunciation judgment** (§ 306 ZPO).

Since these special judgments do not finalize the judgment, they must be titled with the characterizing name (for instance “default judgment” (§ 313 b I ZPO) or “partial judgment”). The default judgment, the renunciation judgment and the recognition judgment need only a brief explanation or none at all (§ 313 B I ZPO).

D. The term “finalizing of the dispute” means the judgment is final:

1. the final judgment is complete, or
2. there is a partial judgment and a closing judgment**,** or
3. there exists a judgment under reservation (§§ 302 599 ZPO).

4. The **final judgment** and the **interim judgment**

The **final judgment** finalizes the instance, at least in part, thus a partial judgment is also a final one. However, the final judgment will not always be a **closing judgment.** A closing judgment is issued after a partial judgment or a judgment under reservation. The final judgment is **enforceable** (§ 704 ZPO)**.**

An **interim judgment** is a decision which:

a. decides an interim dispute such as the legitimacy of a witness to refuse his/ her statement (§ 387 ZPO). It is not a “true” judgment because it does not finalize the instance and cannot be challenged by an appeal. Rather, it can only be challenged in the complaint (§ 387 III ZPO).

b. decides **whether the legal grounds** of the claim are justified. It is handled as a “true” final judgment because it can be challenged in appeal (§ 304 II ZPO).

Comment: The judge should always make use of the **decision on the grounds of a claim** to determine if the respondent is alone or partly responsible. This is especially important when a lengthy procedure of taking evidence has to be initiated to determine the damages **amount** of a claim. This often encourages a willingness of the parties to seek resolution through settlement. Moreover, such use of a judgment on the legal grounds of a claim makes sense when an **insurance company** or a **third person** has to cover the respondent. Such proceedings should take place when clearance of the ground by the Second Instance Court - which might regard the claim as ungrounded - could avoid the enormous costs of hearing and receiving evidence.

5. The **partial judgment** and the **closing judgment**, (§ 301 ZPO)

This occurs in orders when the court decides by **partial judgment** on **one of several claims** or only on the **claim** or the **cross action** (**counterclaim**) when **one of these** are "**ripe**" for the **final decision**. The remaining part will be terminated by the **closing judgment.**

Comment: A partial judgment is only admissible when it cannot be confused by the decision on the rest of the claim. Producing conflicting judgments must be avoided.

Example: When the claimant demands 50.000 EUR the court cannot issue a partial judgment awarding the claimant even a portion of this amount. The court is prevented from doing this since it is possible that ultimately the entire claim could be denied.

It is also not advisable to decide on one or more of the damage claims in an action arising out of the same accident. Often claims arise for compensation of material damage, compensation for loss of earnings, healing costs and compensation for pain and suffering despite the fact that one or more of the partial claims is considered ungrounded.

It is also problematic to dismiss a partial claim, because nobody gets a title. Dismissing a partial judgment only makes sense when there is a plurality of claimants or respondents and one or the other can definitely be excluded by the partial judgment. When there is a single claim in dispute concerning the **base** and the **amount**, the court **may** decide by partial judgment, as long as it renders a **ground judgment.**

Comment: A ground judgment can only be rendered when the claim is disputed concerning the **ground** and the **amount.** That means that a ground judgment is only possible when the claim is aiming to achieve a performance of paying

money or fungible goods. It is **excluded** in cases of **non liquidated declaratory action.**
A judgment **on the legal grounds** is **inadmissible** when the quarrel about the ground of a claim or about attached claims might lead to conflicting judgments.

Example: In a damage action the judge decides that the claim is justified as to half of the requested amount. This should never be done since, in doing so, there now exists a risk of conflicting future judgments.

Another example why the court should not admit a judgment on the ground of a claim, is when the claim is a combination of a payment claim and an "incidental declaratory action". The court must not decide that the payment claim is justified without at the same time taking a positive decision on the declaratory claim.
It is **not economical** to decide **partially** on **minimal claims.** Therefore the law gives the judge discretionary powers to decide if he/she will make use of a partial judgment (§ 301 II ZPO).

Example for inadmissibility of a partial judgment

Claim and counterclaim

Party A claims that Party B unlawfully terminated his contract for employment and that their labour relationship persists. B files a counterclaim. In this case it is not advisable to decide by partial judgment on the claim or counterclaim because the contentious reason for the termination of the employment relationship is decisive for both claims. This means that it cannot be differently assessed. A conflict of judgments could appear here, otherwise.

6. **The action by stages**

§ 254 ZPO admits the action by stages, describing the typical cases where an objective joinder of claims is admitted. When a plaintiff claims an accounting or delivers a statement in lieu of an oath and combines these claims with a demand for relief, he/she is then permitted to claim, in a non enumerated way, up to the clearance of the amount or kind of relief demanded. In these cases the judge has to decide in stages.

Case 8 of the contribution on costs (**action by stages**) - "**Stufenklage im Pflichtteilsrecht**": The plaintiff A, as a person entitled to a compulsory portion, initiates legal proceedings against the heir, B.
A's claim requests:
a. A disclosure about the inheritance;
b. Assurance of the correctness of the statement in lieu of an oath;
c. Payment, as a compulsory portion according to the demanded information, of 1/6 of the total value of the inheritance.

The initial claim is ripe for a positive decision. How does the order (*tenor)* of the judgment sound?

“B is ordered to bring more information about the inheritance of the decedent (it has to be exactly described!). The decision on costs is reserved to the final judgment.”

Remarks:
The action by stages is a further case of the **objective joinder of action** since the three actions can be included in one lawsuit. As previously mentioned, it is one of the few examples of a **non-enumerated demand** for relief, where partial judgments **have to be rendered** because of the necessity of ruling on matters in the previous steps in order to proceed with the demand.

7. **Typical procedural scenarios**

a) **Plurality of parties**
C claims compensation of damages (3000 Euro) from defendants A and B. The claim is only successful against A and the claim against B is rejected. The operative part of the judgment (without the decision on the order to give security in case of execution) states:

“The defendant A has to pay 3000 EUR to the claimant. The claim against B is rejected. The claimant and the defendant, each, must share equally in the payment of court costs and claimant’s personal costs. The defendant A has to bear his/her own costs. The claimant is ordered to pay the personal costs of the defendant B.”

This module can be applied for all situations where there exists a partial success in a claim regardless of the measure of success and the number of involved persons in the proceedings. We will discuss this in more detail later.

The extent of success or loss may be measured by creating a table which demonstrates the claimant’s wins and losses related to the defendant A or B (or other engaged persons). (Oberheim, Zivilprozessrecht für Rechtsreferendare, 3. Auflage, S. 241).

“The defendant A has to bear his/her own costs. The claimant is ordered to pay the personal costs of the defendant B.”

This module can be applied for all scenarios of partial success regardless of the measure of success and the **typical situations during the trial which have different orders (*tenors*).**

b) **The total defeat of the claim**

A claims 700 EUR. The claim **is rejected** (§ 91 ZPO). The exclusive order (*tenor*) of the decision on security states:

“The claim is rejected. The claimant bears the costs”.

c) **The total success of the claim**

A claims 1000 EUR and, in addition, the usual rent (§ 288, S. 2 BGB) as owed since the claim was filed (24.02.2003). The claim **is successful**. The order (*tenor*) states:

“The defendant has to pay 1000 EUR including 5% rent… since February 25, 2003. The defendant has to pay the costs of the proceedings.”

d) **The mostly successful claim**
The claimant asks for the payment of 80000 EUR. The claim is **mostly successful** (70000 is given). The order (*tenor)* states (possible case of § 92 II S. 1):

“The defendant has to pay 70000 EUR to the claimant. The further claim is rejected. The defendant has to bear 87,5% (or 7/8) and the claimant 12,5% (or 1/7) of the procedural costs.”
(The percentage of the claim not awarded did not cause additional costs. Thus, it was not “a petitesse”.)
.
e) **Overwhelming success of a claim** (modification of case 4)
A claims 81000 EUR. His claim is successful in that he is awarded 80000 EUR. The order (*tenor*) states:

“The defendant has to pay 80000 EUR to the claimant. The further claim is rejected. The defendant has to bear the procedural costs.”

Remarks:
The preconditions of § 92 II S. 1 are at least mostly fulfilled and the unfulfilled portion is small. However, the demand exceeding 80000 EUR has caused additional costs because of the increased fees. Nevertheless, it seems appropriate to charge the defendant with all costs because of the fact that the additional cost stayed under 10%. (contentious, a. A: *Schneider/van den Hövel*, Die Tenorierung im Zivilurteil, 3. Auflage Zoeller – Herget, § 92 Rdnr. 10)

f) **The claim for pain and suffering**
The claimant requests **compensation for pain and suffering.** Initially he specifies 5000 EUR. The court deems 4000 EUR as appropriate compensation. Who will bear the costs?

The order (*tenor*) states:

"The defendant is ordered to pay claimant compensation for pain and suffering in the amount of 4000 EUR. The defendant is to bear the costs of the proceedings."

Remarks:
a. Usually the reason for conviction is not mentioned in the order *(tenor)*. But there is an exemption when compensation for pain and suffering is claimed based on a tortuous act with content because of the privilege in execution of such a title (§ 85o f, III ZPO).
b. As required by the law of the court, the **defendan**t will be **charged with costs** when he/she is **mostly** found liable. (i.e., the claimant was awarded 80% or more of the amount claimed). As previously mentioned, this privilege will be conceded to the claimant in the other cases of § 92 II Ziff. 2.
c. When the sentence is based on the discretion of the court and is in accordance with the claim, there is no formal partial rejection and therefore no explanation for the partial rejection in the order *(tenor)*.

II. CASE STUDIES AND EXAMPLES:

1) **Case** (**main request and alternative plea**)

The claimant files a claim against defendant for 45000 EUR and a reciprocal and simultaneous transfer of a Mercedes 500 (serial number, registration Nr. etc) motor vehicle. Claimant also requests damages of 5000 EUR based on defendant's failure to deliver the car.

The claim concerning the main request for damages is not justified, but the overall claim is successful. In which way will the order *(tenor)* be formulated?

Result: "The defendant is sentenced to pay 5000 EUR to the claimant. Any further claim for damages is rejected. The claimant is to bear 90%, the defendant is to bear 10% of the costs."

Remarks:
a. When at least a part of the claim is justified you always have to start the order (*tenor)* with this (positive) part.
b. The quote of 90% to 10% is not quite exact. Nevertheless it is justified. But you may do it more accurately.
c. It is always discussed if the order (*tenor)* should be written in relation to the costs: "the claimant **bears** the costs" or "**has** to bear the costs" or maybe other formulations should be used (as: "the claimant is **imposed** the costs" or "the claimant is **charged with the costs**"). All versions are acceptable. The legislator

you should follow literally in principle is not stringent, himself (compare § 91, 96, 97 I ZPO with § 269 III ZPO).

2) **Case** (**partially successful main request**)

The plaintiff claims compensation for damages due to defendant's failure to deliver a tire. He demands the new tire value of 300 EUR or, in the alternative, the additional supply of the tire. The court deems the claim justified only with regard to the value of a used tire, 100 EUR. What will the order (*tenor*) say?

"The defendant is sentenced to pay 100 EUR to the plaintiff. The further claim is dismissed. The costs of the proceedings impose 66,67% of the burden on the plaintiff and 33,33% of the burden on the defendant."

Proposal: "The defendant is sentenced to pay 3000 EUR to the claimant. The further claim is dismissed. The costs of the proceedings impose on the plaintiff the amount of 3/4 (75%) and the defendant the amount of 1/4 (25%)."

Remarks:
Generally there has to be passed a unitary decision on costs, taking into consideration the **whole** costs. In this example, it would not be appropriate to quote the costs according to the result since the costs for taking evidence were caused only by the defendant. § 96 ZPO allows for the procedural costs to be separated from the costs of taking evidence.

3) **Case** (**main and alternative motion**)

The plaintiff has given a notice of repudiation of contract to the defendant and requests damages in the amount of 45000 EUR reciprocal and simultaneous against return of the car (concrete description…) or, in the alternative, to eliminate the following defects of the car. The claim for repudiation is justified because of several unsuccessful attempts to eliminate the defects. How will the order (*tenor*) be written?

"The defendant is ordered to pay to the plaintiff 45000 EUR, reciprocal and simultaneous, against delivery of the car (concretely described). The defendant bears the costs of the proceedings."

Remarks:
The alternative petition makes sense when the court does not follow the opinion of the plaintiff; he/she did not need to give an additional period of time for remedying defects.

When the court **completely** meets the request of the plaintiff only the corresponding order (*tenor)* has to be expressed. The alternative claim will not be decided. **The value of the matter** is, according to § 19 I S. 2 GKG, 45000 EUR. The alternative claims are not calculated.

4) **Case** (**decision on the main and the alternative claim**)

The plaintiff claims 45000 EUR, reciprocal and simultaneous, against delivery of a car (specified description) or, in the alternative, a compensation for damages in the amount of 5000 EUR (lump sum compensation). The main claim is not justified, the alternative is successful. How will the order (*tenor*) be formulated?

"The defendant will be sentenced to pay to the plaintiff 5000 EUR. The further claim is rejected. The claimant is ordered to pay 90% of the costs; the defendant is ordered to pay the remaining 10% of the costs."

Remarks:
The court only complies with the alternative claim. Because the main request had to be addressed, the cost value is the sum of the main claim and the alternative claim (45000 and 5000).

5) **Case** (**claiming unconditioned sentencing of the defendant, court deems sentencing only justified against reciprocal and spontaneous achievement of the claimant**)

The claimant claims delivery of a good. The court deems that the plaintiff must simultaneously pay the purchase money (5000 EUR). What does the order (*tenor*) say?

"The defendant is sentenced to deliver the machine (to be described concretely!) to the plaintiff reciprocal and spontaneous to the payment of 5000 EUR. The further claim is dismissed. The claimant has to pay 10%, the defendant 90% of the procedural costs."

Remarks:
The claimant looses, in part, when he/she claims unconditioned judgment of conviction. Under special circumstances the court may burden the defendant with all costs (§ 92 II 1. alternative. ZPO).

6) **Case** (**the higher alternative claim**)

Party A claims 4000 EUR asserting that the defendant has damaged his/her car. As an alternative he/she claims the return of a loan of 6000 EUR. The main claim

is dismissed because of lack of evidence, the alternative claim is justified. The order (*tenor*) states:

“The defendant is sentenced to pay 6000 EUR to the plaintiff. The further claim is dismissed. The plaintiff has to pay 40%, the defendant 60% of the procedural costs.”

Remarks:
Although the plaintiff gains more than what was requested in the primary claim, his/her claim has to be partly dismissed. **The value of the matter is 10000 EUR.** The costs have to be distributed in accordance with the amount of loss and win.

7) **Case** (**objective joinder of actions**)

After the expiration of the rental contract, Party A claims:
a. Party B must return possession of the flat.
b. Since B had to pay a monthly rent of 500 EUR, A claims B owes 4000 EUR to pay in past due rent;
c. compensation of damage because of neglected interior redecoration in the amount of 5000 EUR.

The claim is successful concerning the first two claims, but is rejected on the grounds claimed regarding the redecorating. The order (*tenor*) states:

“B is sentenced to return the flat (concretely to be described) to A. B has to pay to A 4000 EUR. The further claim is dismissed. B bears 2/3, A 1/3 of the procedural costs.”

Remarks:
As in case 5 we have a case of objective joinder of actions. These actions could be the object of three different claims. Therefore, the court could render part decisions about each action, when only these parts are ripe for decision (§ 301 ZPO). When the total value of all actions surpasses the claimed amount, the plaintiff has to precise which part of the actions he/she is demanding for. Otherwise the claim is indefinite and must be rejected as “**inadmissible**”.

In such cases the decision on costs has to be reserved for the final decision in the instance! The value of the matters is the sum of all three values (a + b + c), § 12 I GKG in connection with § 5 ZPO. The value of the actions of b and c is determined by the claims themselves (4000 and 5000 EUR). The value of a is based on § 16 I GKG. That means that we have to take the **yearly rent (12 X 500) = 6000.** The total value is 15000 EUR. The expressed quote is combined in one claim. This scenario is an example of the rare case where a non enumerated request is admitted.

8) **Case** (**action by stages**; "**Stufenklage im Pflichtteilsrecht"**)

The plaintiff A, as a person entitled to a compulsory portion, initiates legal proceedings against the heir, B.
A requests:
a. disclosure about the inheritance;
b. an assurance of the veracity of a statement in lieu of an oath;
c. payment of the compulsory portion according to the demanded information, 1/6 of the total value of the inheritance.

The initial claim is ripe for a positive decision. How is the judgment worded?

"B is ordered to supply disclosure about the inheritance of the decedent (it has to be exactly described!). The decision on costs is reserved for the final judgment."

Remarks:
The action in stages is a further case of the **objective joinder of action** because the three actions can be cases of a **non-enumerated demand** for relief. This is a scenario where partial judgments have to be rendered due to the impossibility to decide about the following demands before having decided about the previous ones.

A decision on the costs of the proceedings has to be reserved for the final judgment. A total **value of the matter** has to be settled following the right to benefit ("Leistungsanspruch") as the most valuable part of the action (§ 18 GKG). The fees for the lawyer arise only once according to the value of the concrete stage. The fee for the general proceedings follows the highest value, the fee for the hearing and for taking of evidence is determined according to the value of the hearing or the taking of evidence. The fee for the preparatory actions will be regularly valued with a fraction of the right to benefit ("Leistungsanspruch"), for instance 1/4 up to 2/5.

9) **Case** (**continuation of the action by stages**)

After the information is received, it is stated that the inheritance has no intrinsic value. The plaintiff does not demand the continuation of the right to benefit. He/she declares an amendment to the statement of the claim and demands a **declaratory judgment** burdening the defendant with the costs of the proceedings. The defendant had caused the claim to be filed since defendant refused to hand over sufficient information. The order (*tenor*) states:

"The defendant has to bear the costs of the proceedings."

10) **Case** (**modification of 8 and 9**)

A has demanded from B to supply disclosure about the inheritance. The court states that A is not a person entitled to demand disclosure from B. The order (*tenor*) states:

"The claim is dismissed. The plaintiff bears the costs of the proceedings."

Remarks:
In the first stage it is clear that the entire claim has to be rejected because the plaintiff is not a person with benefit. There is no need to take the next steps. **The value of the matter** is 2000 EUR.

11) **Case** (**a further modification of 9**)

A demands, as a person entitled to the mandatory portion, the disclosure of the inheritance from B, the heir. B gives information after filing of the claim revealing that A could claim for payment. A insists on further information not needed. The order (*tenor*) states:

"The claim is dismissed. The decision on costs is reserved to the final judgment."

Remarks:
Because the action of disclosure is fulfilled, the claim had to be dismissed. But the action of paying the mandatory portion remains. The plaintiff should have demanded it and can do so no longer. Therefore the judgment is only a partial judgment and the decision on costs is to be reserved for the final judgment. Partial judgments have to be named as such.

12) **Case** (**to assure the correctness of a statement in lieu of an oath**)

After a disclosure which causes some doubts concerning the correctness of the statement, the plaintiff demands from the defendant an assurance as to the correctness of the information. How will the order (*tenor*) be worded?

"The defendant is ordered to assure, in lieu of an oath, that he/she informed according to his/her best knowledge about the extent of the inheritance of the deceased… as he was able to do so. The decision on cost is reserved to the final judgment."

Remarks:
The substantive pre-conditions of the action to assure the correctness of a statement is based on § 260 II BGB. Doubts must exist as to whether the statement was delivered with the necessary care and veracity.

13) **Case** (**primary set-off;** “**Primäraufrechnung**”)

The plaintiff demands 30000 EUR as the purchase price. The defendant files a counterclaim resulting from a loan of 10000 EUR. The claim and counterclaim exist. What will the order (*tenor*) say?

“The defendant is sentenced to pay 20000 EUR to the claimant. The claimant bears 1/3, the defendant 2/3 of the procedural costs.”

Remarks:
We are dealing with an unconditioned offset because the defendant opposes only by claiming the return of a loan, which the plaintiff does contest. This defense **does not** augment the **value of the matter.** It **remains** 30000 EUR. Therefore the quoting of costs of 2/3 to 1/3 is justified.

14) Case (**the precautionary set-off;** “**Hilfsaufrechnung**”)

The plaintiff demands 30000 EUR as the purchase price. The defendant asserts payment of the purchase price and, as a precautionary measure, repayment of a contentious loan of 10000 EUR. Both actions do exist. What does the order (*tenor*) state?

“The defendant is sentenced to pay to the claimant 20000 EUR. The further claim is rejected. The defendant has to pay 75%, the plaintiff 25% of the procedural costs.”

Remarks:
The precautionary set-off augments **the value of the matter** (§ 19 III GKG) to the amount of the counterclaim and when a decision on this counterclaim is rendered. This claim is joined with the original claim of the plaintiff, finally and absolutely (§ 322 II ZPO).That means the **value is 40000** EUR.

15) **Case** (**modification of case 13 and 14**)

The plaintiff demands 18000 EUR from the defendant. Defendant contests the claim and offsets it with a contested counterclaim of 18000 EUR. The main claim does not exist. The order (*tenor*) stated:

“The claim is dismissed. The plaintiff bears the costs of the proceedings.”

Remarks:
Since the claim is not justified the court does not have to decide on the counterclaim. That restricts the **value of the matter** to 18000 (the value of the main claim).Therefore the plaintiff as the loser has to bear the entire costs of the proceedings.

16) **Case** (**civil action and cross action;** "**Klage und Widerklage**") **basic case**

The plaintiff demands from the defendant 20000 EUR. In a cross action, the defendant demands delivery of a car (exactly described) with the value of 30000 EUR. The plaintiff's claim is only justified for 10000 EUR, the cross action is completely successful. What does the order (*tenor*) state?

"The defendant is sentenced to pay 10000 EUR to the plaintiff. The further claim is rejected. The plaintiff is sentenced, on the way of cross action, to deliver to the defendant the car (concretely described). The plaintiff has to bear 80%, the defendant 20% of the procedural costs."

Remarks:
The order (*tenor*) generally has to separately address each, the main claim and the cross action. The claim had to be partly rejected since the plaintiff only received 10000 of the demanded 30000 EUR.

To find out the correct decision on costs, the **value of the matter** has to be primarily stated. That is done, in accordance with § 19 I S. 1 GKG, by adding the value of the main claim plus the counter action. That means the total value is 50000 EUR. Because of the final loss of the plaintiff with 4/5, he/she has to pay the corresponding procedural costs and the defendant must pay 1/5. In addition, the decision on the cross action becomes final and absolute (§ 322 I ZPO).

17) **Case** (**The** "**petitorial**" **cross action;** "**die petitorische Widerklage**")

The plaintiff demands the defendant surrender a car (exactly described) with a 30000 EUR value which the defendant took without authorization of the plaintiff. The defendant does not contest this fact, claiming on the way of cross action that the court may determine that he is the owner of the car and, therefore, entitled to possess it. The court states that the defendant is the owner of the car. How will it be decided? The order (*tenor*) states:

"The claim is dismissed. On the way of the cross action it is determined that the defendant is entitled to possess the car (concretely determined). The plaintiff bears the costs of the proceedings."

Remarks:
Generally the claim based on § 861 ZPO will be successful because of the illegal behaviour of the defendant. The possession is protected even when there does not exist a substantive authorization. The defendant usually cannot make substantial objections (§ 863 BGB). But, nevertheless, it is possible to file a cross action with the goal of stating the substantive entitlement of the possession.

18) **Case** (**declaratory judgment**)

Due to a traffic accident, the plaintiff demands from the two defendants, B and C, compensation for damages totaling 5000 EUR. Additionally he claims 2000 EUR compensation for pain and suffering. He further asks for a declaratory ruling that the defendants are responsible for any future damages resulting from the accident. The claim shall be successful concerning the quantified claims. In addition, the declaratory claim is partially granted, as well. What may be the problem of this claim? The order (*tenor*) states:

"The defendants are sentenced as joint debtors to pay 5000 EUR to the plaintiff. The defendants are also sentenced to pay compensation for pain and suffering of 2000 EUR. It is ascertained that the defendants have to compensate all future material and moral damages resulting from the accident (concretely determined) which are not known up to now and not transferred to social insurance institutions or third persons. The further claim is rejected. The defendants have to bear the costs of the proceedings."

Remarks:
The claim concerning the declaratory request had to be partially rejected because the immaterial damages currently known have been taken into consideration with the gained compensation for pain and suffering. Therefore, the unlimited claim is not justified. As to the **value of the matter** in the positive declaratory claim the practice of the court generally settles the matter at 20% below the demand for action to enforce a right. The value of a negative declaratory claim will be settled with regard to the entire amount since an action to enforce a right would have to be rejected totally (Musielak, ZPO, § 256 Rdnr. 45; "2 Streitwert"). In practice, we mostly find negative declaratory cross actions.

Example:
The plaintiff claims two concretely named monthly amounts of rent. The defendant files a claim alleging the rent relationship is entirely null and void. The **value of the matter** would be the sum of the two monthly rents plus the value of the negative cross action (the yearly amount of the rent, § 16 GKG).

19) **Case** (**provisional judgments, the process based on documents**)

The plaintiff claims in a special procedure 25000 EUR against the defendant based on presented documents. The defendant objects that he cannot offer proof by documents. The claim is successful. How is the order (*tenor*) written?

"The defendant is sentenced to pay 25000 EUR to the plaintiff. The defendant has to bear the costs of the proceedings. The defendant remains with the right to pursue his/her rights in a succeeding procedure."

Remarks:
Applicable are the special provisions in §§ 599 ff ZPO.

20) **Case** (**withdrawal of a claim**)

Party A claims 5000 EUR. After service of the claim she withdraws the claim stating that the defendant paid the amount in advance. The defendant files a claim requesting a decision on the matter. How will it be decided?

"The plaintiff bears the costs of the proceedings (§ 269 III S. 2 ZPO)."

Remarks:
The withdrawal of a claim usually means that the plaintiff bears the costs, regardless of the reasons for this kind of termination of the proceedings. Exemptions will be made when the claimant, having his claim satisfied by the defendant, renounces the claim immediately after having been informed about the lack of his right to pursue the matter further (analogical application of § 93 ZPO). In such a situation the claimant could also change the content of the claim to demand only the payment of the costs of proceedings.

A third alternative may be the use of the special institute of **disposal of the cause of action** ("**Erledigung der Hauptsache**"). The basic case is regulated in § 91 a ZPO. The courts have developed variations of the case (common disposal between the pendency and the service, disposal from one side - 2 "einseitige Erledigung"). This needs to be further reflected.
Relevant scenarios for decisions on costs are the different situations concerning **judgments by defaults** (§330 ff ZPO).

21) **Case**

The respondent was summoned to the hearing but did not appear and was not represented. The claimant, claiming 10000 EUR from respondent, requests the rendering of a default judgment . The judgment has the heading "Default Judgment". The order (*tenor*) states:

"The defendant is sentenced to pay 10000 EUR to the claimant. The defendant has to bear the costs of the proceedings."

Variation of the case: The defendant does not answer to the claim in the written pre-trial review (§ 331 III ZPO). The claimant has requested to render a judgment of default, asking for 10000 EUR. The preconditions for rendering such decision are fulfilled. This will be headed **"default judgment"** (in written pre-trial review). The order (*tenor*) states:

"The defendant is sentenced to pay 10000 EUR to the claimant. The defendant has to bear the costs of the proceedings."

“Untrue default judgment”

Facts: The claimant asks for payment of 10000 EUR from the defendant. In his claim he asserts that the defendant has paid this sum in advance, but with delay. The defendant regularly summoned did not appear to the oral hearing. The Court will reject the claim by “**untrue default judgment**” by final Judgment with the order (*tenor)* saying:

“The claim is rejected. The claimant bears the costs of the proceedings.”

Remarks:
The claim is not justified based on claimant’s own statement that the debt has been paid, albeit late. Claimant sues for the full benefit of the debt but without an explanation of damages caused by the delay. Thus, the decision does not depend on the absence of the defendant from the hearing, which is normally supposed as conceding the assertion of the claimant (§ 138 III ZPO).

Sentencing of the defendant to pay a henceforth benefit (§§ 257, 259 ZPO)
a. When a demanded benefit or the eviction of real estate serving to give the claimant accommodation depends on a henceforth date, claimant may sue the defendant before that date is reached (§ 257).
b. This early claim is also admitted when there are grounds for an assumption that the defendant will attempt to abscond (§ 259).
c. A third case is admissible, when the claim is directed at a repeated benefit (§ 258 ZPO).

Sentencing of the defendant to performance and subsidiary [case (main request and alternative plea)]
Because defendant failed to deliver the car, claimant asks the defendant be ordered to pay 45000 EUR and make a reciprocal and simultaneous transfer of the car Mercedes 500, (serial number, registration Nr. etc), subsidiary to pay damages of 5000 EUR, as a lump sum payment. The claim concerning the main request is not justified, but the plea is successful. How will the order (*tenor*) be formulated?

Result: “The defendant is sentenced to pay 5000 EUR to the claimant. Any further claim for damages is rejected. The claimant is to bear 90%, the defendant is to bear 10% of the costs.”

Remarks:

a. When at least a part of the claim is justified you always have to start the order (*tenor)* with this (positive) part.

b. The quote of 90% to 10% is not quite exact. Nevertheless it is justified. But you may do it more accurately.

c. It is always discussed if the order (*tenor)* should be written in relation to the costs: "the claimant **bears** the costs" or "**has** to bear the costs" or maybe other formulations should be used (as: "the claimant is **imposed** the costs" or "the claimant is **charged with the costs**"). All versions are acceptable. The legislator you should follow literally in principle is not stringent, himself (compare § 91, 96, 97 I ZPO with § 269 III ZPO).

III. The different parts of a judgment, § 313 ZPO

a. **The caption** ("**rubrum**")

a. 1. Registration of the suitcase (Letter, number), § 4 AktO
a. 2. Notice about pronouncing of the judgment (§ 315 III ZPO)
a. 3. Heading of the judgment (§ 311 ZPO) - "in the name of the people"
a. 4. Naming of the parties and of the court (and judges), § 313 I ZPO
a. 5. Date of the conclusion of the hearing (§ 313 I ZPO)
a. 6. Type of dispute ("vindication claim" etc.), naming of the kind of judgment ("default judgment") etc.

b. **Operative part of the judgment** (**order or** "**tenor**")**,** § 313 I Nr. 4 ZPO

b. 1. Decision on the main claim inclusively about rent
b. 2. Costs
b. 3. Enforceability

c. **Statement of facts** ("Tatbestand"), § 313 I Nr. 5 II ZPO

d. **Legal and factual reasoning,** § 313 I Nr. 6 III ZPO

e. **Signatures of the judges,** § 315 I ZPO

Drafting of first instance civil judgments Slideshow

The German model

Dr. Horst Proetel

Task of the reasoning

- The court has to justify why it followed (did not follow) the request (self- justification/ transparency of the court‘s actions)
- The parties- mainly the losing one- shall know why the claim has (not) been successful.
- The court of appeal or the competent instance have to know why the first- instance court did reach the result.

General aspects on drafting

- Judgment is a state act: it must be inambiguous and resolute (not unsteadily and hesitating)- neutral reasoning/ no blames- dignity of the court must be guarded.
- The operative part must be understandable and executable per se: The only auxilary can be the wordening of the judgment.
- Language must be convincing/ short phrases/ the main points belong to main clauses
- Mode of expressions must be clear
- Judgement must be understandable for parties (avoidance of termini technici and borrowed words)

Style

- Consideration‘s style for the argumentation/ assessment preparing the decision
  > you are looking for the result >

- Decision‘s style for the judgment
  - You have found the result >

Components of a judgment

- **Heading**: „In the name of the people/ constitution“— Characterizing of the judgment
- **Determination of the parties** and their representatives
- **Naming of the court** and the judge(s)
- **Day of pronouncement** of the judgement
- **Operative part of the judgment** (tenor)
- **Report on facts**
- **Legal reasoning** inclusively the decsion on ancillary claims and costs
- **Signature(s)** of the judge(s)

The components of the operative part of the judgment

- The decision on the **main request** (in the main)

- The decision on the **costs** (usually ex officio)

- The decision on the **enforceability**
  (ex officio)-“ provisionsally enforceable“

Categories of judgments (I)

- Procedural judgments

- Judgements on the merits

Categories (II)

- Provisionally enforceable judgment

- Final judgment

Categories (III)

- Concerning the **content**

- a. judgment granting **affirmative relief**
- **b. declatory judgments**
- **c. judgments affecting a legal relationship**

Categories (IV).

- Distinction pursuant **the way** the judgment is produced:

  a. the contradictory judgment

  b. the non contradictory judgment (judgment **by default** and judgment by **consent**-acknowledgement and waiver judgment)- usually not reasoned

Categories (V)

- The **partial** and **final** verdict (judgment)
- The interlocutory and final judgement
- The interim judgment and the judgment exhausting the matter of the proceedings

Structure of the report on facts

- Introductory phrase /characterising the dispute
- Undisputed facts (history of the case)
- Statements of the plaintiff
- Request of the plaintiff
- Request of the defendant
- Procedural history (when happened)

Ordering of facts in the report on facts

- The sequence of the presentation depends on the comprehensibility (chronically or according to factual events)
- The onus of presentation- of proof- will determine if a contentious fact will be listed in the station of the paintiff or defendant

Characteristic linguistic means in the report on facts

: Introductory phrase: present indicative
- Undisputed facts : simple past, indicative

Contentious statements: present conjunctive
Requests of the parties: present indicative
Former history : perfect indicative
Outdated history : pluperfect

Separation of facts and legal points

- **Facts** are reported in the **report on facts;** legal opinions only exceptinally
- The legal reasoning of the judgement usually does not mention if the court follows the opinion of one side
- **Facts** are characterised by the formulation: „claimant/ the defendant **asserts“**
- **Legal opinions** are introduced by : „The plaintiff **has the legal opinion/ view**; **he/ she thinks**; **is of the opinion“** etc**.**

Structure of the reasons in general

- The reasoning has to correspond to the operative part of the judgment
- Reasoning of the decision on the admissibility of the action (when problematic)
- When action is not admissible the reasoning has to restrict to this point (no discussion on the merits)
- Reasoning on the extent of reasonable justification (totally or partly successful)
- In case of partly success: start with the successfull part and expressing this
- In each case: starting with the basis of the claim and discussing all elements of the claim

Structure of a sucessful claim

- Start with information on the success.
- Identifying the basis of the claim and discussion on the elements (starting always with the result)
- Restricting to **one basis** of the claim when there are relevant several ones
- Discussion on additional respective basis when the first

one(s) might be weak.

Structure of an action totally rejected (I)

- Start with the information that the action is **not justified**
- Discussion on all possible basis of claims- starting with the most promising- handling with **all** elements of the actions when problematic; sufficient may be the discussion on the obviously lacking element

Structure of an action partly justified

- Start with information on the partial success
- Identification of the relevant basis of the claim
- Discussion on all elements of the claim
- Reasoning of the part being not justified

Structure of an action totally rejected (II)

- Regular start with **contractual** claims (when indicated)
- Claims out of **quasi- contractual** relations
- Claims out of managing without authorisation
- Liability for enrichment
- Liability on tortious acts

Variations of the report on facts and reasoning

- In case of (precautionary)set-off or counter- action when the claims of the defendant are not resulting of the same facts the action is based on
- In case of plurality of parties (plaintiffs or defendants) with different statements)
- Final decision following a judgment by defaults or a provisional judgement

THE TECHNICAL STRUCTURE OF A COURT JUDGMENT IN ROMANIA

SLIDESHOW

By Viorel Voineag

- The structure of a judgment in Romania has 3 parts
- 1. THE INTRODUCTORY PART (EXPOSEE)
- 2. RATIONALE (EXPLANATION, DEMONSTRATIVE PART)
- 3. DISPOSITIVE

Introductory part of a judgment

- Comprises:
  - ***AN INDICATION OF THE COURT ISSUING THE DECISION***
  - ***THE NUMBER OF THE FILE***
  - ***THE NAMES OF THE JUDGE AND THE COURT CLERK***
  - ***THE NAMES OF THE PARTIES AND OF THEIR REPRESENTATIVES AND THEIR QUALITY IN THE TRIAL***

- ***THE OBJECTIVE OF THE CASE***
- ***THE ORAL ARGUMENTS OF THE PARTIES (REQUESTS FOR EVIDENCE, INVOKING PROCEDURAL EXCEPTIONS, OTHER PETITIONS, PRODUCING EVIDENCE – SUBMITTING DOCUMENTS, WITNESSES' TESTIMONY, EXPERT ANALYSES, INTERROGATION, ETC)***
- ***ACTIONS RULED BY THE COURT***
- ***THE FINAL CONCLUSIONS OF THE PARTIES AND OF THE PROSECUTOR'S, IN THE EVENT HE TOOK PART IN THE PROCEDURE***
- ***WHEN THE LAWSUIT DOES NOT TAKE PLACE ON THE FIRST TERM, THE INTRODUCTORY PART COMPRISES ONLY WHAT HAPPENED DURING THE LAST TERM. EVERYTHING THAT IS DECIDED DURING THE PREVIOUS TERMS OF THE LAWSUIT IS WRITTEN IN THE PREPARATORY JUDGMENTS, TERMED AS "CLOSINGS" AND WHICH DO NOT SOLVE THE ISSUE IN SUBSTANCE.***

STATING THE REASONS OF THE DECISION (EXPLANATION/ANALYSIS PER SE, DEMONSTRATIVE PART)

- STRUCTURED IN THREE PARTS
  - **1. PART I:** the object of the claim is stated and the de facto and de iure motives of the plaintiff explained.

It starts with the following formula:

"Regarding the request, the instance retains the following:

According to complaint no. ..., judged by this court, the plaintiff XY sues the defendant ZT requesting the court to take a decision which will dispose the following: ....".

The content of the defense formulated by the defendant is then explained .

STATING THE REASONS OF THE DECISION (EXPLANATION/ANAYLYSIS PER SE, DEMONSTRATIVE PART) – *Second part*

- 2. Second part: **the procedure carried out in front of the court is summarized – essential elements:**

  - ***Exceptions of procedure solved***
  - ***The evidence agreed upon by the parties – summary presentation***
  - ***Other procedural incidents***

THE REASONS OF THE RESOLUTION (THE EXPLANATION/ANALYSIS, THE DEMONSTRATIVE PART) – *Continued*

- 3. The third part (the most important one): ***de facto* and *de jure* reasons which determined the court's ruling,**

as well as those for which the requests of the parties have been dismissed.

- **As a rule this part begins with the following formulation:**
  - **“Analyzing the present case through the perspective of the reasons, the defense and the evidence produced, the court retains the following:”**

THE REASONS OF THE RESOLUTION (THE EXPLANATION/ANALYSIS, THE DEMONSTRATIVE PART) – *Continued*

- THE REQUIREMENTS OF THE THIRD PART OF THE REASONS (THE EXPLANATION) OF THE JUDGMENT.
  - **ALL REQUESTS SUBMITTED BY THE PARTIES MUST BE ANALYZED.**
  - **ALL THE ESSENTIAL ARGUMENTS RAISED BY THE PARTIES FOR AND AGAINST THE ACTION MUST BE IDENTIFIED AND ANALYZED.**
  - **THE DE FACTO SITUATION MUST BE CLEARLY ESTABLISHED BY INDICATING THE EVIDENCE ON THE BASIS WHICH THE ACTION HAD BEEN ADMITTED. WHEN CONTRADICTORY EVIDENCE EXISTS, THERE SHOULD BE AN EXPLANATION AND ANALYSIS OF WHY CERTAIN EVIDENCE WAS ADMITTED AND OTHERS WERE DISMISSED.**

- **THE COURT'S ANALYSIS OF THE EVIDENCE MUST BE CLEAR, SIMPLE AND STERN SO THAT IT IS CONVINCING.**

THE REASONS FOR THE RESOLUTION (THE EXPLANATION/ANALYSIS, THE DEMONSTRATIVE PART) – *Continued*

- THE REQUIREMENTS OF THE THIRD PART OF THE REASONS (THE EXPLANATION) OF THE JUDGMENT - Continued
  - **EMOTION-LADEN PHRASES MUST BE AVOIDED.**
  - **IT IS FORBIDDEN TO USE LOCUTIONS, PROPOSITIONS OR PHRASES WHICH MIGHT INDUCE A LACK OF IMPARTIALITY, OR INDEPENDENCE OF THE JUDGE, OR TO LET PREJUDICES INFLUENCE THE DECISION.**
  - **THE ENTIRE ANALYSIS MUST BE DONE ACCORDING TO THE LEGAL TEXTS THAT APPLY IN THE MATTER.**
  - **THE CONCLUSIONS REACHED BY THE COURT AFTER ITS ANALYSIS MUST BE IN ACCORDANCE WITH THE FINAL RESOLUTION.**

THE DISPOZITIVE PART OF THE JUDGMENT (THE FINAL PART)

- IT CONTAINS THE RESOLUTION OR RESOLUTIONS ADOPTED BY THE COURT FOLLOWING THE DELIBERATION.

- IT MUST CONTAIN THE SOLUTIONS ADDRESSING ALL THE REQUESTS OF THE PLAINTIFF.
- IT MUST NOT BESTOW MORE THAN REQUESTED.

- IT MUST CONTAIN THE SPECIFICATION THAT THE JUDGMENT HAS BEEN PRONOUNCED IN A PUBLIC SITTING, THE MEANS OF APPEAL, THE NAMES OF THE JUDGE AND OF THE COURT CLERK AND THEIR SIGNATURES.

- THIS FINAL PART OF THE JUDGMENT IS INTRODUCED IN THE JUDGMENT'S CONTENT THROUGH THIS FORMULATION:

FOR THESE REASONS

IN THE NAME OF THE LAW

RULES

THE STRUCTURE OF A COURT JUDGMENT IN ROMANIA
TECHNICAL SCHEME – *Introductory part*

- File no. 1342/2007

Romania
Bucharest Tribunal
Civil law judgment nr. 543/23.09.2007
Public session of September 23, 2007
Panel of judges:
President: Viorel Voineag
Court clerk: Adrian Ionescu

The judgment of the civil action having as object claims, involving plaintiff XY and defendant ZT

The parties answered when called upon in public session.

The procedure was legally carried out

The report on the case was done by the court clerk, after which, due to the fact that there were no extra claims to formulate or evidence to administer the floor was given to the parties for final conclusions.

The plaintiff requests the admission of the complaint as it was formulated, with the granting of the legal expenses.

The defendant requests the rejection of the civil action.

The court retains the action.

THE STRUCTURE OF A COURT JUDGMENT IN ROMANIA

TECHNICAL SCHEME – *Rationale (The motivation per se)*

THE COURT

I. Regarding the current complaint considers the following:

According to complaint no. ..., judged at Court X ..., the plaintiff XY sues the defendant ZT requesting the court to issue a judgment which obliges the defendant to pay 3,000 EURO and also legal expenses.

In the explanation the defendant showed the following: .....

The defendant formulated an answer requesting the rejection of the complaint as being unfounded, due to the following reasons: ....

II. During the trial .....

III. Analyzing the current complaint and taking into consideration the invoked motives, the defense and the administered evidence, the court considers the following:
De facto, ...
De jure, ...

THE STRUCTURE OF A COURT JUDGMENT IN ROMANIA
TECHNICAL SCHEME – *Dispositive*

FOR THESE REASONS

IN THE NAME OF THE LAW

DECIDES

Admits the civil action formulated by plaintiff XY residing in ..., against defendant ZT, residing in ...

Obliges the defendant to pay the plaintiff the sum of 3,000 EURO, plus 500 EURO legal expenses.

There is the right to appeal within 15 days after the decision has been communicated

Pronounced in a public session today September 23, 2007

JUDGE	**COURT CLERK**
Viorel Voineag	**Andrei Ionescu**

Workshop material
Viorel Voineag

Case File no 2345/2007

ROMANIA
Bucharest Court of Law
Civil Judgment no 494
Public sitting of 23.09.2007
Court members: Presiding Judge: Silvia Popescu
Court clerk: Andrei Ionescu

The case pending before the court of law is the civil action involving claims made by the plaintiff Pavel Constantinescu against the defendant Ion Nistor.

Both parties responded to the nominal calling made during a public sitting.

The summoning procedure is now legal.

The court clerk made the oral description of the case, after which

The plaintiff requests the acceptance of written evidence, the hearing of witness AB and the cross-examination of the defendant.

The defendant requests the acceptance of written evidence, the hearing of witness CD and the cross-examination of the plaintiff.

The court decides after deliberation to accept the evidence proposed by both parties.

Both parties lodge documents to the file.

The two witnesses are heard and their declarations are registered and appended to the file.

The gathering of evidence begins with the examination of the defendant, whose answers to the plaintiff's questions are registered and appended to the file.

The courts proceeds to examine the plaintiff, whose answers to the defendant's questions are registered and appended to the file.

Without any other petition to register or evidence to administer the court gave the floor to the parties in order to express their final conclusions.

The plaintiff asked for the lawsuit to be admitted by the court according to the request and the evidence provided.

The defendant requested the court to admit the two procedural exceptions invoked in his petition and in subsidiary to dismiss the lawsuit as ungrounded in substance.

In reply, the plaintiff requested the court to dismiss the defendant's request as ungrounded.

The court decides to admit the lawsuit.

THE COURT

Assumes the following from the present lawsuit:

In his petition no 2345/24.05.2007 the plaintiff Pavel Constantinescu filed a lawsuit against the defendant Ion Nistor and requested the court to order through its judgment the annulment of the sales contract no 645/13.03.2007 between the plaintiff and the defendant by means of which the latter sold the vehicle DACIA LOGAN to the former for the selling price of 5000 €. At the same time, the plaintiff requested the court to compel the defendant to repay the sum of 5000 €, as well as the legal interest to this sum which would have been remitted starting with the date when the contract was signed.

In his statement of motives, the plaintiff showed that on the 13.03.2007 he went to the Vitan car market in Bucharest with the purpose of buying a car for his son who would turn 18 in two weeks time. Thus the plaintiff showed his son had very good marks at school and an exemplary behavior with respect to his classmates and family and so he thought as appropriate to give him a significant reward, that is a car, on his 18th birthday, the legal age for acquiring a driving license.

After consulting with his wife the plaintiff decided to buy a second hand vehicle, one manufactured in Romania, its price being accessible according to his budget. At the same time the plaintiff also thought of the high risk that the car could be involved in nasty road episodes, due to the traffic jams in Bucharest and his son's short experience in driving a car.

Consequently, on the respective day the plaintiff went to the Vitan car market and after examining more offers decided to buy a car from the defendant Ion Nistor. When making the decision the plaintiff took into account the brand, the origin and color of the car, the date of manufacture, the number of kilometers on board, the selling price, the general condition of the car, the technical characteristics, and the fact that according to

the seller's the car had not been involved in road incidents before. Not least, the plaintiff's decision was also influenced by the seller's nature, being of relatively the same age as the plaintiff, and by the seller's manner of speaking which gave the plaintiff a sense of trust. Moreover, a friendship relation began between the plaintiff and the defendant, the two having a lot of common interests, paying visits to each other and participating in sports or cultural activities together.

After approximately 2 weeks from buying the respective vehicle, the car was handed over to the plaintiff's son the understanding being that he would use it for free to his own will for a period of 5 years.

The plaintiff also showed that at the beginning of June 2007, while his son was driving on Ion Mincu Street, he was hit frontally by another car, the driver of which had not paid attention, lost direction of the car and entered the opposite lane. In the wake of the frontal impact the plaintiff's son suffered a few medium injuries, but the surprising fact was that the airbag system on the car did not start off, although this would have been imperative due to the intensity of the impact.

Taking into account that following the collision the car underwent a number of damages it was taken to an authorized repairing garage.

At the request of the plaintiff the representatives of the garage undertook a complete and complex check of the entire vehicle and informed the plaintiff that the car had been involved in a road incident previously in which the airbag system had been wrecked and a lot of important pieces had been replaced with others. The plaintiff was also informed by the professionals that, in their opinion, a lot of the pieces from the car had no authenticity warranty of authorized producers, and that the paint applied on the car after the respective incident was of a relatively low quality so there would be a risk that after a somewhat short period of time the paint would bloat and peel off.

After learning about the professionals' observations the plaintiff became very angry with the defendant and asked the latter to annul the sale contract and thereafter to return the money, that is the 5000 €, and the plaintiff would hand over the vehicle with the closing of legal formalities foreseen in this case.

The defendant did not consent to the proposal and informed the plaintiff that he did not know of the condition of the car since at his turn he had bought it from another person approximately one year before.

Noting the defendant's refusal to pay back the money, the plaintiff decided to bring the present lawsuit in which he requests the cancellation of the sale contract and the restitution of the price and the appropriate interest.

The plaintiff showed that the car presented hidden flaws, important ones, at the time of signing the contract, flaws which were not disclosed by the seller and which he could not identify himself since he had no expert knowledge about cars. Had these flaws been disclosed to him, the plaintiff would certainly have not bought the car. Moreover, the defendant's claim that he did not know of the flaws of the car is not credible since he deals with car sales among other things.

To prove his position in the lawsuit the plaintiff submitted to the file the sales contract no 645/13.03.2007, his son's – Paul Constantinescu – birth certificate, the Report on the Findings no 23/28/05.2007 by SC Service expert SRL Bucharest.

In law the provisions of articles 1, 2 and 3 of Law no 123/1990 were invoked.

The defendant formulated a response through which he invoked two procedure exceptions and in substance he requested the dismissal of the procedure. Thus the defendant invoked the exception of the active party in a lawsuit and showed that the plaintiff is not the legitimate person to bring a lawsuit, but his son who actually owned and used the vehicle. Since the owner of the car did not bring a lawsuit against the defendant, the plaintiff does not have the right to initiate such a judicial procedure, and thus the lawsuit should be rejected on the basis of exceptions and the examination of the matter in substance would not be necessary.

The defendant also invoked the exception of passive party in a lawsuit by showing that he is not the one to be brought before the court of law, but the person from whom he bought the car at his turn approximately one year before. To this end he stated that he was never aware that the car had been previously damaged and had technical flaws so he has no guilt in this sense and should not answer before the court for that.

In substance, the defendant showed that he never knew of the previous damages and that the car has quite a lot of technical shortcomings. He claimed the fact that he would have never thought of misleading so many people by presenting as real a false situation, taking into account that he is an honorable person being a physics teacher at one of the biggest high schools in the city. He showed that he indeed bought and sold again approximately 10 vehicles in the past 2 years with the aim of receiving additional financial gains since his salary is very low. All these vehicles however had been bought

from Germany and sold in Romania, so they were of German fabrication, and the defendant had no specialist technical knowledge about cars.

If indeed the car sold to the plaintiff had technical flaws this could only be a misfortune and the defendant must not be held responsible in any way since he has no guilt. He showed that the car sold to the plaintiff was bought with great financial endeavors; that it was the first car in his property; that he used it in good conditions for about 8 months when he decided to sell it as he needed money to take care of his wife's medical problems.

He also showed that it is also the plaintiff's fault he didn't test the car at the moment of buying it and that he didn't ask for a technical expertise from an authorized garage as is the practice.

In the event that the court would not take into account this defense and would consider it has to rule the cancellation of the sales contract, the defendant stated that he would not agree to pay back the same price of the car since its value decreased with the passing of the time and the increase in the number of kilometers covered.

He also stated that the court can not rule the cancellation of the contract as long as the car is not repaired. Thus the defendant showed that the car is stored in a garage but did not undergo reparation as the plaintiff did not remit the necessary money and the person guilty of damaging the car can not be held liable since he/she is in financial incapacity.

During the trial the parties requested, and the court admitted, to allow the written evidence, the witnesses and the cross-examination.

The following documents have been put on record: the sales contract no 645/13.03.2007, the birth certificate of Paul Constantinescu, the Report on the Findings no 23/28.05.2007 by SC Service expert SRL Bucharest, the sales contract no 78/12.06.2006, the incorporation certificate of the respective car, the Traffic Police Brigade's offense report.

Witness AB, nominated by the plaintiff, and witness CD, nominated by the defendant, were heard.

The evidence of the examination of the parties was retained, their answers being registered and appended to the file.

Giving preference to the analysis of the procedural exceptions invoked by the defendant, the court retains the following:

The exception of the active party in a lawsuit is ungrounded as the plaintiff is right to bring the present lawsuit through which he requests the cancellation of the sales contract and the repaying of the price, under the circumstances of the plaintiff being the one who, with the best intentions, decided together with his wife to make a beautiful and well-deserved gift to their son on his 18th birthday, fact confirmed by witness AB, heard at the request of the plaintiff and who was present at the discussions of the plaintiff with his wife, as he was a good friend of the family. The invocation of this exception by the defendant is only made with the obvious intention to avoid liability for his deed which was contrary to any social norm, i.e. to pledge for the hidden flaws of a sold good, and thus we draw that the defendant wants to hide the true facts from the court, the conclusion being that he is dishonest in all his defenses.

In this sense the defendant's attitude is absolutely reprehensible as he, although in a close friendship relation with the plaintiff, a fact confirmed by both witnesses heard on the matter, did not proceed to resolve amiably the conflict.

The more so, the fact that the defendant is also a teacher at an important high school in the city should have determined an adequate behavior from his part, as he should be an example for the students he educates in the spirit of legal rules and social cohabitation that every citizen has to master and respect.

We can not say that the plaintiff is not legitimate to bring the present lawsuit so far as from the evidence results he is the owner of the car (he is mentioned as the owner on the incorporation certificate), and the remittal of the car towards his son was done as a gratuitous loan on a period of 5 years as confirmed by the witness nominated by the plaintiff. This gratuitous loan for 5 years represents an interesting method used by the plaintiff to stimulate his son to continue studying, to graduate from college, which would ensure the possibility of getting a well-paid job and an important status in society. It is thus praiseworthy that the plaintiff did not choose to donate the vehicle to his son, a situation in which the property rights would have been passed onto his son and thus the latter might not have been so motivated to continue having good results in his studies. Only in case the property rights of the car had been passed onto his son, would the defendant be able to say that the plaintiff was not legitimate in filing the complaint.

By analyzing the present matter in substance, from the perspective of the motives, the defenses and the evidence, the court retains the following:

At the beginning of March 2007, the plaintiff together with his wife decided to buy a vehicle DACIA LOGAN, second hand, with the intention of giving it to their son to use

for free for a period of 5 years, as the latter would turn 18 soon and deserved a present for his good marks and exemplary behavior in society. This fact was confirmed by the witness AB heard by the court.

This intention was put into action and on the 13.03.2007 the plaintiff together with the witness AB went to the Vitan car market in order to buy a car. Here, after seeing several cars and discussing with several sellers, they decided that, taking into account the technical characteristics and the price, the car put on sale by the defendant represented the best option. Not least, the decision to buy this car was influenced by the seller's nature, the latter persuading the plaintiff and the witness that he was a respectable person and he would not try to offer them a vehicle having different technical features than the real ones. This fact also results from the witness AB's declaration and from the defendant's answers during the examination, the answers to questions 3 and 4 respectively.

From the offense minutes corroborated with the findings report no 23/28/05/2007 it arises that the respective car, while being driven by the plaintiff's son, was involved in an incident when the frontal part of the car was damaged. When the car was taken to an authorized garage it was found that the airbag system was not working and many of the car's pieces have been replaced after another road incident which had taken place before the sales contract was signed. According to the professionals' from the garage opinion, had the car been brought in order to be verified they could have easily notice all these deficiencies. From the same findings report the court retains that had the technical deficiencies of the car been known, its market value would have been of maximum 3500 €.

In these circumstances, the court retains that had the plaintiff known about these deficiencies of the car, he either would not have bought the respective car either would have paid a smaller price. The circumstance that the defendant did not know these deficiencies existed has no relevance when it comes to the liability for hidden flaws, and thus admitting the lawsuit, canceling the contract and admitting the request to be repaid the money are imperative.

FOR THESE REASONS
IN THE NAME OF THE LAW
DECIDES

Dismisses as ungrounded the exceptions of the active and passive party in a lawsuit.

Admits the suit brought by the plaintiff Pavel Constantinescu, with the domicile in…against the defendant Ion Nistor, with the domicile in…..

Decrees the cancellation of the sales contract.

Obliges the defendant to pay the plaintiff 5000 €.

Possibility of appeal within 15 days from the passing of the decision.

Proclaimed in a public sitting today, 23.09.2007.

PRESIDING JUDGE, COURT CLERCK
Silvia Popescu Andrei Ionescu

Requirements for the participants:

The litigation terminated by the judgment reproduced above is legally grounded on the provisions of articles 1, 2 and 3 of Law no 123/1990 regulating the sales contract.

These legal provisions state the following:

Art.1 – *The seller is liable for the hidden flaws of the good being sold, independently of whether the seller was aware of them or not.*

Art. 2 – *The flaws of a certain good are considered hidden when they couldn't have been identified by a person having a special training in the respective field.*

Art. 3 – *In case the good being sold had hidden flaws, the buyer has the right to request the cancellation of the sales contract and to be bestowed damages and interest.*

Analyze the judgment above through the perspective of these legal provisions and identify all the deficiencies in its drafting.

REPUBLIC OF CROATIA
MINISTRY OF JUSTICE
Judicial Academy

TECHNIQUES FOR DRAFTING CIVIL JUDGMENTS

Workshop – manual for workshop leaders

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Zagreb, 2007

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General instructions

Within the framework of the Judicial Academy there exists a general consensus that organising workshops on the theme of "Drafting first instance judgments in civil cases" presents one of its most important tasks. It will not only be an opportunity for discussion and exchange of various viewpoints between its participants, which in itself is useful, given the general objective that is desired to be achieved in the work of the Judicial Academy – better quality and more efficient conducting of judicial activities. So as not to repeat those themes which the workshop participants already know well, the emphasis of this workshop should be on those problems which according to the conducted survey among the judges and attorneys (in supplement) are considered key for enabling faster but at the same time better quality work in drafting first instance decisions. In this manner judges will be able to use their working hours, for the most part, to conduct other judicial activities, and more easily and more quickly control their own work. Certainly this would also enable efficient control of their work before second instance courts and, in the finality, better conducting of all activities in the competency of the judicial authorities.

Taking into account the results of the anonymous survey conducted among the first instance and second instance judges, but also among attorneys, the following can be concluded:

1. First instance judges spend between 30 and 50 % of their working hours on the drafting of their decisions. At this point it must be emphasised that none of the surveyed judges stated that they do not draft decisions outside of working hours, on the contrary a large majority of them stated that they regularly draft decisions outside working hours. They consider that for them it is most difficult to draft explanations of decisions, however as reasons for deficiencies in their decisions they also state that they are overloaded with cases, that legislation is not accessible enough (?!), but also that not enough attention is given to the acquisition of professional literature and equipping of courts with technical and other aids.

2. Attorneys consider that there are the most deficiencies in explanations of first instance decisions (evaluation of proof, application of substantive law, lack of reasons, verbosity, incomprehensibility). On the other hand they note that lately there is a notable trend in greater care in the drafting of written communications of judgments. The majority believe that it is necessary to invest additional lesser effort to improve the techniques of drafting decisions so that they become shorter and more comprehensible. They expressed their opinion that they should be comprehensible to a degree to their clients.

3. Second instance judges also spend between 30 and 50 % of their working hours drafting decisions, and they regularly draft them outside working hours. They believe that

the deficiencies of first instance decisions can also be found in their introduction (e.g. deceased persons and trades business are listed as parties in the proceedings, parties are incorrectly marked), dispositions (sometimes there are decisions missing about all the motions or about the objection to the existence of claims due to set-off, the disposition is not always clear enough) and of course explanations (evaluation of evidence, application of substantive law, unnecessary verbosity, lack of explanations of decisions about costs). They believe that it is necessary to invest additional efforts in improving techniques for drafting first instance decisions (equally "insignificantly" and "to a great measure") and this so that they become shorter, clearer and with complete explanations in regards to motions of parties, facts, evidence and application of substantive law.

Therefore this material was conceived to enable participants of the workshop acquisition of practical knowledge which would enable the correction of noticed deficiencies. It should be considered a non-binding offer for tutors that assist him in expressing his own experiences in specific legal areas and to organise discussion among participants.

We would like to point out that this manual applies to all decisions rendered by the court, and not only judgments, and may also be partially used to organise workshops which apply to decisions of second instance courts.

The material may be used as a whole or in parts. It may be supplemented in terms of content and/or didactically, according to the evaluation of the tutor. Every part of the content following may be copied for the purpose of use by both the tutor and participant regardless of the final recommendation. The other parts of the presentation are also at the disposal of the tutors. The same may be adapted to the existing technical conditions. The PowerPoint presentation may, for example, be use in its entirety or as part of a presentation using a graph scope, or in the version which has been enclosed in the written form.

It is however recommended that the application of a participatory approach is understood to be an important element of the concept of this seminar. In relation to the methodology aspects, a review of the "Manual on contemporary teaching techniques" is recommended with the purpose of obtaining ideas for giving the appropriate type of presentation. The examples in this material should be considered possible options.

For all further amendments to this material, as well as the entire system of training, it is necessary to receive a detailed feedback reaction of all participating parties. There for careful evaluation of this seminar by the participants and tutors does not represent an evaluation of the tutors alone, rather serves as contribution to improve the entire training system.

Therefore we kindly ask that you carefully fill out the enclosed questionnaire for evaluation of the workshop!

In the event of any inaccuracies or doubts in any part of the contents of this material, we will gladly receive all your suggestions!

Working plan for six-hours

Becoming acquainted with the issues and indications in regards to the expectations of participants.	15 – 20 minutes	One minute per participant is recommended. One option is that each participant expresses their expectation within one minute, and the other option is that, at the very beginning, participants are given cards on which they should express their expectations in not more than 5 words or not more than 2 – 3 points. These cards can be hung on the wall and can be returned to at the very end of the seminar when summarising the results.
Purpose of the seminar	10 minutes	Familiarisation with the results of the survey is recommended. Additionally, as an option the tutor may announce his seminar time schedule.
Presentation of relevant legislation and judiciary	20 minutes	General indications and novelties in the Civil Procedure Act. Mention the most important provisions of the Court Rules of Procedure and decision in some EU Member States. The use of a shorter introductory PowerPoint presentation is recommended. Show an example of one

		decision of the Constitutional Court of the Republic of Croatia and one decision of the German Court.
Discussion on language	20 – 30 minutes	Overview of 2 – 3 judgments and language editor comments
break	15 minutes	
Judgment introduction	15 minutes	The use of a PowerPoint presentation is recommended. Statements on obligatory content. Meaning of the introduction (possible control of competency, capabilities of parties, subjective and objective changes, participation of interfering parties, etc.).
Judgment disposition	30 minutes	What it contains; how to write a disposition. PowerPoint presentation and special presentation in regards to individual dispositions (word document directly by means of a projector or distribution of written material).
Work in groups – 1 round (disposition)	20 minutes	The following is recommended: - time for handing out working material and for discussion in working groups (4 – 5 groups) - individual types of dispositions, and especially: interim judgments, judgment of non-suit, partial judgment of non-suit, judgment

		which contains a decision on the existence of set-off claims (adopting, non-suit), disposition of a decision on costs, etc. - the tutor must decide on the number and type of cases - group work must be carefully prepared according to the degree of complexity and number of cases; as an option there should be additional cases prepared for situations where more than one round of work is carried out in groups. For assistance and ideas see the “Manual on contemporary teaching techniques”.
Plenary work (discussion about individual viewpoints and getting acquainted with the results of work in groups)	30 minutes	Recommended for presentation of the results of the work of working groups and discussion in the plenum
break	30 minutes	
Explanation of the judgment	30 minutes	Use of a PowerPoint presentation is recommended.
Work in groups 2 – 3 rounds (explanation) combined with plenary work between rounds	140 minutes	- Methodology as in the case of previous work in groups. - Place emphasis on shortening and clarity of explanation.
Conclusion and comparison with the expectations of participants at the beginning of the seminar	15 minutes	It is recommended as the time for giving a summarised conclusion by the participants and closing remarks by the

		tutor. The tutor may call upon the expectations which the participants listed in the beginning.
Evaluation of methodological approach	15 minutes	Feedback is recommended for future seminars – very important. See "Important instructions for tutors".
Total duration	360 minutes	

Introductory presentation

Pravosudna akademija

TEHNIKE PISANJA PRESUDA U GRAĐANSKIM PREDMETIMA

TECHNIQUES FOR DRAFTING CIVIL JUDGMENTS

NOVELE 2003. GODINE

- Odluke suda sukladno 325.a ZPP;
- Kondemnatorne presude prije dospjelosti tražbine (odnos članaka 186.c i 326. ZPP);
- Presuda na temelju odricanja (331.a ZPP)
- Presuda zbog ogluhe (331.b ZPP)
- Presuda bez održavanja rasprave (332.a ZPP)
- Pisana izrada presude koju je objavio drugi sudac (337.a ZPP)

NOVELTIES 2003

- **Court decisions in accordance with Article 325 a of the Civil Procedure Act**
- **Condemnatory judgments before maturity of claim (relation of Article 186c and 326 of the Civil Procedure Act);**
- **Judgment based on waiver of a claim (331 a of the Civil Procedure Act)**
- **Default judgment (331 b of the Civil Procedure Act)**
- **Judgment without holding a hearing (332 a of the Civil Procedure Act)**
- **Writing judgment drafts which has been pronounced by another judge (337 a of the Civil Procedure Act)**

Pravosudna akademija

PRESUDA ZBOG OGLUHE

Članak 331.b ZPP

- - uvjeti
- - ograničenja
- - obveza tužitelja da preinači tužbu ako iz činjenica ne proizlazi osnovanost tužbenog zahtjeva (članak 331.b stavak 4. ZPP)
- - obrazloženje (članak 338. stavak 5. ZPP)

JUDGMENT DUE TO DEFAULT

Article 331 b of the Civil Procedure Act

- **conditions**
- **limitations**
- **obligations of the plaintiff to alter the civil action if from the facts the groundedness of the claim does not ensue (Article 331 b, paragraph 4 of the Civil Procedure Act)**
- **explanation (Article 338, paragraph 5 of the Civil Procedure Act)**

PRESUDA BEZ ODRŽAVANJA RASPRAVE

- Priznate relevantne činjenice, a osporen tužbeni zahtjev,
- - obrazloženje,
- - usp. članak 298. ZPP.

JUDGMENT WITHOUT HOLDING A HEARING

- **Relevant facts recognised, claim contested,**
- **explanation,**
- **compare with Article 298 of the Civil Procedure Act.**

PRESUDA NA TEMELJU ODRICANJA

Članak 331.a ZPP

- - kad nije moguće (vidi članak 270. Obiteljskog zakona)
- - opoziv odricanja od tužbenog zahtjeva (članak 331.a stavak 5 ZPP).
- - djelomično odricanje
- - obrazloženje (članak 338. stavak 5. ZPP)

JUDGMENT BASED ON WAIVER OF A CLAIM
Article 331 a of the Civil Procedure Act

- **when it is not possible (see Article 270 of the Family Act)**
- **revocation of waiver of a claim (Article 331 a paragraph 5 of the Civil Procedure Act).**
- **Partial waiver**
- **Explanation (Article 338, paragraph 5 of the Civil Procedure Act)**

Pravosudna akademija

PRESUDA NA TEMELJU PRIZNANJA

Članak 331. ZPP

- - kad nije moguće (vidi članak 270. Obiteljskog zakona)
- - opoziv priznanja tužbenog zahtjeva (članak 331.a stavak 4. ZPP)
- - djelomično priznanje
- - obrazloženje (članak 338. stavak 5. ZPP)

JUDGMENT BASED ON ADMISSION OF A CLAIM
Article 331 of the Civil Procedure Act

- **when it is not possible (see Article 270 of the Family Act)**
- **revocation of admission of claim (Article 331 a, paragraph 4 of the Civil Procedure Act)**
- **partial recognition**
- **explanation (Article 338, paragraph 5 of the Civil Procedure Act)**

DJELOMIČNA PRESUDA

Članak 329. ZPP.

- - kad se mora donijeti djelomična presuda (članak 329. stavci 2. i 3.)
- - problem donošenja odluke o dijelu tužbenog zahtjeva ako presuda ne sadrži deklaratorni dio o osnovi tužbenog zahtjeva
- obrazloženje

PARTIAL JUDGMENT

Article 329 of the Civil Procedure Act

- **when should a partial judgment be rendered (Article 329, paragraphs 2 and 3)**
- **the problem of rendering a decision on part of the claim if the judgment does not contain a declaratory part on the grounds of the claim**
- **explanation**

FACULTAS ALTERNATIVA

Članak 327. ZPP

- - izreka
- - obrazloženje

FACULTAS ALTERNATIVA
Article 327 of the Civil Procedure Act

- **disposition**
- **explanation**

Pravosudna akademija

MEĐUPRESUDA

Članak 330. ZPP

- - uvjeti
- - kombiniranje s djelomičnom presudom

INTERIM JUDGMENT
Article 330 of the Civil Procedure Act

- **conditions**
- **combinations with partial judgment**

Pravosudna akademija

PROTUTUŽBA I PRIGOVOR POSTOJANJA TRAŽBINE RADI PRIJEBOJA

- - izreka
- - obrazloženje

COUNTERCLAIM AND OBJECTION AGAINST THE EXISTENCE OF CLAIM DUE TO SET-OFF

- **disposition**
- **explanation**

DELIVERING AND ANNOUNCEMENT OF JUDGMENTS

Pravosudna akademija

PISMENA IZRADA I DOSTAVA PRESUDE

Članci 337 – 338. ZPP

- - rok,
- - izrada i potpisivanje presude od strane suca koji je nije donio i objavio, Sudski poslovnik, članak 84. - “U slučaju dulje odsutnosti ili nastupanja drugih iznimnih okolnosti (smrt, iznenadna teška bolest i dr.) zbog kojih sudac nije u mogućnosti izraditi ili potpisati odluku koju je objavio, odluku će po nalogu predsjednika suda izraditi i potpisati drugi sudac. Neizrađena odluka izradit će se prema sadržaju proglašene odluke i prema podacima iz spisa.”,
- - sadržaj presude (općenito).

WRITTEN DRAFT AND DELIVERY OF JUDGMENTS
Article 337 – 338 of Civil Procedure Act

- **deadline**
- **drafting and signing of judgment by the judge who did not render and announce it, Court Rules of Procedure, Article 84 – “In the event of extended absence or occurrence of other exceptional circumstances (death, sudden serious disease, etc.) due to which the judge is not able to draft or sign a decision which he announced, the decision will be drafted and signed by another judge upon the disposition of the President of the Court. An undrafted decision will be drafted according to the content of the announced decision and according to the details from the file.”,**
- **content of the judgment (general).**

NJEMAČKA JUDIKATURA

- Obveza razdvajanja obrazloženja na dijelove (činjenice i primijenjeno pravo

GERMAN JUDICATURE

- Obligation of separation of explanation into parts (facts and applied law)

Pravosudna akademija

NOVIJA PRAKSA USTAVNOG
SUDA REPUBLIKE HRVATSKE

RECENT PRACTICE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA

SUDSKI POSLOVNIK (Članak 85. stavci 4. i 8.)

- "Na presudama u sredini na vrhu stavit će se grb u izvornim bojama a ispod grba stavit će se velikim rastavljenim slovima riječi "U IME REPUBLIKE HRVATSKE". Ispod toga, a iznad uvoda, stavit će se velikim rastavljenim slovima riječ "PRESUDA".
- "U uvodu odluke, koju je donijelo vijeće, imena članova vijeća navode se redoslijedom, počev od predsjednika vijeća i po položaju najstarijeg člana. Ako je predsjednik suda ili predsjednik sudskog odjela član vijeća, njihova se imena navode odmah iza imena predsjednika vijeća."

COURT RULES OF PROCEDURE (Article 85, paragraphs 4 and 8)

- **"On judgments in the middle of the top of the page place the coat of arms in its original colours and under the coat of arms place in large spaced letters the words "ON BEHALF OF THE REPUBLIC OF CROATIA". Under this and above the introduction, place in large spaced letters the word "JUDGMENT".**
- **"In the introduction of the decision, rendered by the Chamber, the members of the Chamber are listed in the disposition beginning with the President of the Chamber and according to the position of the oldest member. If the President of the Court or President of the Court department is a member of**

the Chamber, their names are listed immediately after the name of the President of the Chamber.”

- **Court Rules of Procedure (Article 85, paragraph 9)**
- **Under the introduction, and under the text of the disposition, in a special row in small spaced letter will be indicated what type of decision the court rendered (“adjudicated”, “decided”, etc.). Under the disposition, and before the beginning of the explanation, the title “Explanation” is placed in large letters, without spaces.**

OTHER PARTS OF THE JUDGMENT – I

- **Court Rules of Procedure, Article 85, paragraph 10 and 11.**
- **Under the text of the explanation, in the middle of the page, the place and date of announcing the decision or rendering, and on the right side of the page is the signature of the President of the Chamber or single judge (name and surname), while the signature of the court reporter is placed on the left side, if this is determined by the provisions of the procedure.**
- **The court seal is placed to the left of the signature of the President of the Chamber or single judge.**

OSTALI DIJELOVI PRESUDE - II

- Sudski poslovnik, članak 92.
- Na svim izvornicima i otpravcima odluka protiv kojih je dopušteno podnošenje redovitog pravnog lijeka stavit će se, ispod teksta izvornika, a iznad štambilja o ovjeri suglasnosti otpravka s izvornikom, uputa o redovitom pravnom lijeku.
- Uputa o pravnom lijeku sadrži pouku o tome kakav je pravni lijek dopušten, u kojem roku, te kome i u kolikom broju primjeraka može ovlaštena osoba izjaviti pravni lijek.

OTHER PARTS OF A JUDGMENT – II

- **Court Rules of Procedure, Article 92**
- **On all original documents and written communications of the decisions against which the submitting of regular legal remedy is permitted will be placed under the text of the original and above the seal certifying the concordance of the written communication with the original, instruction of regular legal remedy.**
- **The instruction of legal remedy contains information about what kind of legal remedy is permitted, within which time period, and to whom and in how many copies may the authorised person state the legal remedy.**

OPĆE ODREDBE SUDSKOG POSLOVNIKA O SUDSKIM ODLUKAMA

- Sudski poslovnik, članak 82.
- Tekst sudskih odluka i ostalih akata mora biti jasan, sažet i čitljiv.
- U odlukama i ostalim aktima obvezatna je uporaba zakonskih izraza.
- Zakone i druge propise koji se navode u odluci ili aktu treba, u pravilu, pisati njihovim punim nazivom uz naznaku glasila u kojemu su objavljeni. Mogu se rabiti samo one kratice koje su uobičajene i lako razumljive.

GENERAL PROVISIONS OF THE COURT RULES OF PROCEDURE ON COURT DECISIONS

- **Court Rules of Procedure, Article 82.**
- **Text of court decisions and other documents must be clear, brief and legible.**
- **In decisions and other documents the use of legal terms is obligatory.**
- **As a rule the full title of Acts and other legislation listed in the decision or document should be listed with an indication of which publication they were published. Only those abbreviations which are common and easily understood can be used.**

- Uporaba stranih riječi i izraza koji nisu općeprihvaćeni u redovitom postupku suda, svest će se na najmanju potrebnu mjeru. Način izlaganja mora biti jasan i razumljiv. Za pojedine pravne pojmove rabit će se prihvaćeni izrazi.
- Vremensko trajanje kazne, iznos novčane kazne, kao i novčana svota glavnoga dijela tužbenog zahtjeva u parničnim predmetima i tome slično označit će se u izreci odluke osim brojevima još i slovima u zagradi.
- Mjesec u nadnevku označit će se nazivom pojedinog mjeseca. U izreci i obrazloženju odluke stranke će se, ako ih je više od dvije ili ako se u istom postupku raspravlja o suprotnim zahtjevima (tužbi i protutužbi), spominjati njihovim punim imenom, a ne po redu nabrajanja (kao npr. prvotuženi, drugotuženi i sl.).

- **the use of foreign words and expressions which are not generally accepted in regular court proceedings will be reduced to the least possible measure. The manner of presentation should be clear and comprehensible. For individual legal terms accepted expressions will be used.**
- **The duration of the punishment, amount of the monetary fine, as well as monetary amount of the main part of the claim in civil procedure cases and similar items will be marked in the disposition of the decision in both numbers and in words written in brackets.**
- **The month in the date will be indicated by the name of the month. In the disposition and explanation of the decision, if there are more than two parties or if in the same procedure litigation is carried out for opposite claims (claims and counter-claims), the parties will be mentioned using their full names and not in the disposition in which they are listed (like for example: first accused, second accused, etc.).**

STAJALIŠTE ECHR

- Predmet Garcia Ruiz v. Spain (br. 30544/96)

- Poziva se na relevantnu odredbu prava tužene države (Ley de enjuiciamiento civil, članak 359.) prema kojoj "presude moraju biti jasne i precizne, i odnositi se na sve zahtjeve stranaka; moraju sadržavati odluku u korist ili protiv tuženika i ocjenu suda o svim spornim činjenicama" te njenoga Ustava (članak 120. § 3.) prema kojoj "presude uvijek moraju biti obrazložene i javno proglašene".

VIEWPOINT OF THE EUROPEAN COURT OF HUMAN RIGHTS

- **Case Garcia Ruiz vs Spain (No 30544/96)**

- **Refers to the relevant provision of the right of the sued country (Ley de enjuiciamiento civil, Article 359) according to which "judgments must be clear and precise, and refer to all the parties claims; they must contain decisions in favour of or against the defendant and evaluation of the court about all contentious facts" and its Constitution (Article 120 § 3) according to which "judgments must always be explained and publicly announced".**

Presentation (WORD) - examples (disposition)

Disposition by which a claim is accepted

Example A

The claim which reads as follows is accepted:
"The defendant is obliged to handover to the plaintiff the moveable thing – table for the workshop, with dimensions 1.20 X 0.60 m, and also to return to him all the metal tools with original box, or otherwise pay him the amount of 4,000 HRK within 15 days under threat of execution.

The defendant is obliged to compensate the resulting litigation costs in the amount of 1,950 HRK to the plaintiff within a period of 15 days under threat of enforcement".

Example B

1. The defendant is ordered to handover to the plaintiff a wooden table for the workshop, with dimensions 1.20 x 0.60 metres, and also to return to him all the metal tools, i.e. 8 star keys of the brand "Gedoro", given that the plaintiff is released from returning the movables referred to insofar as the defendant pays the amount of 4,000 HRK (in words: ____________) within a period of 15 days.
2. The defendant is ordered to compensate the litigation costs in the amount of 1,950 HRK to the plaintiff within a period 15 days.

Disposition by which the claim is rejected

Example A

A plaintiff lodging a claim to render a judgment confirming the existence of the right of servitude across cadastral plot No. 578, building site of 650 m^2, entered in the land registry file No. 1270 of the cadastral municipality of Plase, is rejected.
The plaintiff is obliged to compensate the litigation costs of 2,460.50 HRK to the defendant within 15 days and under threat of execution.

Example B

1. The claims which reads as follows is rejected:
   "It is established in favour of cadastral plot No. 577, building site of 770 m^2, entered in the land registry file 1269 of the cadastral municipality of Plase, of a width of 2.5 metres, length of 25 metres, situated on the southern edge of the plot, there exists real property servitude of the roadway at the favour of the plaintiffs cadastral plot No. 578, building site of 650 m^2, entered in land registry file No. 1270 of the cadastral municipality of Plase, as the property under servitude."
2. The plaintiff is ordered to compensate the litigation costs of 2,460.50 HRK to the defendant within a period of 15 days.

Disposition by which the claim is partially adopted and partially rejected

Example A

1. The claim which reads as follows is adopted: “The defendant is ordered to move out of the apartment in Rijeka, A. K. Rika 10, II floor, apartment No. 3, surface area $78m^2$, and that this apartment free of persons and things is handed over into possession of the plaintiff within a period of 15 days.”
2. The claim in the remaining part is rejected as ill-founded.

Example B

1. The defendant is ordered to move out of the apartment in Rijeka, A. K. Rika 10, apartment No. 3 on the II floor, surface area $78m^2$, in the building situated on the cadastral plot No. 780, entered in the land registry file Plase, and that this apartment, free of persons and things, is handed over into the possession of the plaintiff within a period of 15 days.
2. The claim in the remaining part which reads as follows is rejected:

“The defendant is ordered to pay the plaintiff compensation of damages in the amount of 12,370 HRK (in words: ______) with legal interest in arrears commencing from the 1.12.2002 according to the rate of 15 % annually until full payment, as well as reimbursing litigation costs”.

3. Each party shall settle their own costs

Disposition of the decision on the claim when an objection of set-off is emphasised

Example A

1. The claim of Mirko Mirić towards Ante Antić in the amount of 15,000 HRK is established, and the claim of Ante Antić towards Mirko Mirić of 10,000 HRK is established.
2. The defendant is obliged to pay the plaintiff the amount of 5,000 HRK.
3. The defendant is obliged to pay litigation costs in the amount of 2,345 HRK to the plaintiff within a period of 15 days under the threat of execution.

Example B

- Adopting

1. The existence of the claim of the plaintiff Mirko Mirić toward the defendant Ante Antić in the amount of 15,000 HRK (in words: __________) is established.
2. The existence of the claim of the defendant towards the plaintiff in the amount of 10,000 HRK (in words: __________) is established.
3. The aforementioned claims are set-off and the defendant is ordered to pay the plaintiff the amount of 5,000 HRK (in words: __________) with legal interest in arrears commencing from 1 July 2002 according to the rate of 15 % annually, and also to compensate the litigation costs in the amount of 2,345 HRK within a period of 15 days.

- non-suit with regards to the plaintiff

The claim which reads as follows is rejected:

"The defendant is ordered to pay the plaintiff the amount of 15,000 HRK (in words: __________) with legal interest in arrears commencing from 1 July 2002 according to the rate of 15 % annually, and also to compensate the litigation costs."

- <u>non-suit with regards to the defendant</u>

1. "The defendant is ordered to pay the plaintiff the amount of 15,000 HRK (in words: __________) with legal interest in arrears commencing from 1 July 2002 according to the rate of 15 % annually, and also to compensate the litigation costs."
2. It is established that the debtor's claim towards the plaintiff in the amount of 10,000 HRK (in words: _____) does not exist (following on from which the defendants objection of the existence of claim due to set-off is rejected).

- <u>Complete set-off</u>

1. The existence of the claim of the plaintiff Mirko Mirić towards the defendant Ante Antić in the amount of 15,000 HRK (in words: ________) is established.
2. The existence of the claim of the defendant towards the plaintiff in the amount of 15,000 HRK is established (in words: ___________).
3. The listed claims are set-off and the claim of the plaintiff Mirko Mirić for payment of the amount of 15,000 HRK (in words: ____________) is rejected.
4. The plaintiff is ordered to compensate the litigation costs of the defendant in the amount of 2,345 HRK within a period of 15 days.

Presentation (word) – examples (explanation)

Excerpt from the explanation of the decision on the occasion of the claim due to disturbance of possession (application of substantive law)

DECISION: “A”

On the basis of so conducted process of hearing evidence it is established that the plaintiff was in the most recent state of possession of the subject real estate, so that the defendant disturbed them in such possession by removing their things from the referred area. For this reason the court has accepted the claim in its entirety.

DECISION: “B”

On the basis of the aforementioned facts it was established that the plaintiffs were in the most recent state of possession of the subject real estate, that is, area in the ground floor of the house in Rijeka, at the cadastral plot No. 1513/1 of the cadastral municipality of Plase, and that the defendant by removing their things from the referred area, arbitrarily disturbed them in such possession. As a consequence of this, the plaintiffs, by applying legal standards referred to in Article 22, paragraph 1 and 2 of the Act on Ownership and real rights, should have been given protection of possession and their claim should be accepted in its entirety.

The defendants attitude that this procedure is about the case referred to in Article 24 of the Act on Ownership and real rights is ill-founded and this for the simple reason that none of the evidence produced implies that the parties were in co-possession of the contended property.

Excerpt from the explanation of the decision on the occasion of the claim due to the payment of a loan (facts, evidence)

DECISION: "A"

In the procedure it was not under contention that the parties verbally concluded a loan agreement in the amount of 5,500 HRK and this on 4 May 2004, according to which the defendant, as the borrower, pledged to return the aforementioned monetary amount to the plaintiff at the latest by 4 October 2004.

It is under contention whether? the defendant returned the sued monetary amount, that is, whether he returned on the due date or at a much later date, whether he returned it partially, and whether in the event of the existence of principal debt or its part, the dependant owes the plaintiff interest in arrears.

In the course of a procedure evidence was presented by examining the documentation enclosed in the file (page 10 to 25 of the file) and the proposed witness and parties were heard.

DECISION "B"

It is not under contention that the parties verbally concluded a loan agreement in which the defendant pledged to return to the plaintiff the loaned monetary amount of 5,500 HRK by the 4 May 2004 at the latest.

It is under contention whether the defendant properly fulfilled the aforementioned liability.

In the procedure evidence proposed by the parties was presented and this by examining the written documentation, that is, letter of the defendant from 4 March 2004, letter of the defendant from 15 April 2004, and letter of the plaintiff from 10 April 2004 (page 10 to 25 of the file), the witnesses Ante Antič and Miro Mirić and the parties were heard. (The parties did not have any further evidential proposals).

Excerpt from the explanation of the decision on the occasion of the claim for compensation of damages (claims of the parties)

DECISION: "A"

The plaintiff lodged a civil action in which he claims that in 1999 he suffered a traffic accident in which he suffered bodily injury. He claims that because of this injury the plaintiff has suffered physical pain, fear and disfigurement, given that he also suffers psychological pain due to reduced life activities. Aside from this, the plaintiff has also suffered tangible damage in the form of medical costs and trips to physical therapy. He requests that the defendant, whom he considers, as an insurer, to have the capacity to be sued and fully responsible, compensates this damage. In the claim he requests that he be paid on account of damages due to

suffered physical pain the amount of 10,000 HRK, on account of fear the amount of 5,000 HRK, on account of psychological pain due to reduced life activities the amount of 30,000 HRK, and on account of disfigurement the amount of 16,000 HRK. On the basis of compensation of material damage, the plaintiff requests a payment of 586.99 HRK. He considers that he did not in any way contribute to the damage.

In a legal brief from 12 June 1999, the plaintiff altered his claim so that on account of total damages he requests the amount of 61,586.99 HRK.

Subsequently, in the legal brief from 15 October 2001, the plaintiff again altered the claim and sued on account of physical pain 8,000 HRK, and on account of psychological pain due to reduced life activities the amount of 36,000 HRK. With the legal brief from 10 December 2001 he no longer requests any compensation on account of fear, while on account of immaterial damage he has requested interest as of the passed judgment, and for material damages from maturity.

DECISION “B”

In the civil action from 1 October 1999, the plaintiff states that on 31 August 1999, due to the fault of the insurer of the defendant, he was hurt in a traffic accident in which he was seriously physically injured. He believes that the defendant, as the insurer of the party incurring damage, has the capacity to be sued and is fully liable for the incurred material and immaterial damage. With the finally set claim he requests compensation of damages and this a request for interest on the account of physical pain 8,000 HRK,

psychological pain due to reduced life activities 36,000 HRK, disfigurement 16,000 HRK, fear 7,000 HRK, and on account of treatment costs 286.99 HRK and travel to physical therapy 300 HRK, that is, a total of 60,586.99 HRK, all with interest stated in detail in the explanation.

The plaintiff has withdrawn the civil action in regards to compensation of damages on the basis of fear suffered in the amount of 7,000 HRK.

Notes:
What is the amount of the claim?
When was the civil action **lodged?**
When did the traffic accident occur?
Has the civil action **been withdrawn?**

Excerpt from the explanation on the occasion of a civil action **due to establishing ownership rights**
(why and how the court established the facts, which evidence was presented and why, and how were these evaluated)

DECISION: "A"

In his testimony the witness Ante Antić points out that even back in 1940 he passed through the subject real estate and that at the time he used to see the plaintiff and his father working on the land, firstly with horses, and later with a tractor. After the death of the plaintiff's father, the contested land was worked exclusively by the plaintiff and this unhindered until the present day.

The witness B. Borić states that as a young child, somewhere around 1935, passing on his way to school he used to see the mother and father of the plaintiff working on the subject real estate. They worked on the plough-field which they ploughed and then planted barley wheat. Their son, the plaintiff in this procedure, continued working too and everyone believed that he was the owner of the contested plot of land. He worked in this manner even last year, when on the contested land he planted young apple plants. No one ever hindered him.

The witness C. Cindrić points out that the contested land is owned by the plaintiff which he acquired through inheritance after the death of his father Nikola, who was the owner of the subject real estate. When she was a little girl, as the neighbour of the plaintiff she saw his parents, and later the plaintiff working on the disputed real estate. That the same was fenced off by a stone drywall by the plaintiff's grandfather, who planted an oak tree on the real estate which exists to the present day.

The witness D. Dorić states that on the contested land he never saw anyone from the plaintiff's family. On the contrary he states that this was a plot on which everyone could freely come and graze their stock, which is what he (plaintiff) and his predecessors did, but also all the other neighbours and town inhabitants and which they continue to do so to the present day. That the last time he was on the contested land was somewhere immediately after 1960, after which he moved to Rijeka.

From a certificate from the competent cadastre it is evident that the predecessor of the plaintiff is entered as the possessor of the contested land, back from the revision of lands in 1956.

With an examination at the disputed location it was established that the plaintiff was in possession of the contested land, which is represented by a fenced off plot with planted fruit trees and an oak. The real estate is entered through gates which lock, and the key is in the possession of the plaintiff. The wall around the real estate is stone and obviously very old, as well as the large oak in the northern part. Therefore the court established that the plaintiff has been in possession of the contested land back since 1935, so that his claim was determined to be founded.

DECISION "B"

From concordant, and for this court, unbiased statements from the majority of witnesses heard (Antić, Borić and Cindrić), it was established that the plaintiff was in long term unhindered possession of the contested land, which was initially owned by his grandfather, and then parents and then finally the plaintiff himself and this in the manner that the contested land was fenced off by a stone wall, worked as a plough-field and recently an orchard.

The court did not establish the determining facts on the basis of the witness D. Dorić given that his knowledge of the state on the contested land reaches back only to 1960, while for judgment it is important and completely sufficient everything that took place on the contested land even after this year. Aside from this his claims are in contradiction to the state on the field, evidence examined and testimony of the other witnesses, so they are therefore all the more unconvincing.

Work in groups (disposition of judgment)

(*Examples which are not included in the participants manual)

EXAMPLE 1

In the civil action the plaintiff states that he is the owner of the real estate entered in the land registry file 222 of the cadastral municipality Donja and this house number 1 with a surface area 1000 m^2. He also states that the defendant is the owner of the neighbouring real estate which is entered in the land registry file 333 of the cadastral municipality Donja and this house number 2 with a surface area of 500 m^2 and that there exists the right to real property servitude for movement of livestock and passing of pedestrians with a width of two metres along the entire western border of the real estate owned by the defendant with a length of 30 metres – in favour of the servient owner of the real estate which is owned by the plaintiff. It is stated that the plaintiff and his predecessors used this part of the real estate owned by the defendant for over forty years, and that servitude has been acquired by prescription. It is proposed that the witnesses Ana Anić and Miro Mirić be heard, who are acquainted with the fact that the plaintiff and his predecessors used the real estate owned by the defendant, for movement of livestock and passing of pedestrians, during the aforementioned time period.
The court is asked to establish the existence of the right to the aforementioned real property servitude and that the defendant is ordered to issue a title deed suitable for entry of such servitude into the land registry book, as on the contrary such a document will be replaced by the judgment rendered in the subject litigation, and compensation of the costs of the litigation.

Reject the claim!

EXAMPLE 2

In the civil action the plaintiff states that he is the owner of the real estate entered in the land registry file 222 of the cadastral municipality Donja and this house number 1 with a surface area 1000 m^2. He also states that the defendant is the owner of the neighbouring real estate which is entered in the land registry file 333 of the cadastral municipality Donja and this house number 2 with a surface area of 500 m^2 and that there exists the right to real property servitude for movement of livestock and passing of pedestrians with a width of two metres along the entire western border of the real estate owned by the defendant with a length of 30 metres – in favour of the servient owner of the real estate which is owned by

the plaintiff. It is stated that the plaintiff and his predecessors used this part of the real estate owned by the defendant for over forty years, and that servitude has been acquired by prescription. It is proposed that the witnesses Ana Anić and Miro Mirić be heard, who are acquainted with the fact that the plaintiff and his predecessors used the real estate owned by the defendant, for movement of livestock and passing of pedestrians, during the aforementioned time period.

The court is asked to establish the existence of the right to the aforementioned real property servitude and that the defendant is ordered to issue a title deed suitable for entry of such servitude into the land registry book, as on the contrary such a document will be replaced by the judgment rendered in the subject litigation, and compensation of the costs of the litigation.

Accept the claim!

EXAMPLE 3

In the civil action the plaintiff states that he is the owner of the real estate entered in the land registry file 222 of the cadastral municipality Donja and this house number 1 with a surface area 1000 m^2. He also states that the defendant is the owner of the neighbouring real estate which is entered in the land registry file 333 of the cadastral municipality Donja and this house number 2 with a surface area of 500 m^2 and that there exists the right to real property servituded for movement of livestock and passing of pedestrians with a width of two metres along the entire western border of the real estate owned by the defendant with a length of 30 metres – in favour of the servient owner of the real estate which is owned by the plaintiff. It is stated that the plaintiff and his predecessors used this part of the real estate owned by the defendant for over forty years, and that servitude has been acquired by prescription. It is proposed that the witnesses Ana Anić and Miro Mirić be heard, who are acquainted with the fact that the plaintiff and his predecessors used the real estate owned by the defendant, for movement of livestock and passing of pedestrians, during the aforementioned time period.
The court is requested to establish the existence of the right to the aforementioned real property servitude and that the defendant is ordered to issue a title deed suitable for entry of such servitude into the land registry book, as on the contrary such a document will be replaced by the judgment rendered in the subject litigation, and compensation of the costs of the litigation.

Reject the claim of the plaintiff in the part which orders the defendant to issue a title deed, but accept the remaining part! Render a decision on the costs!

EXAMPLE 4

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999. The court is requested to order the defendant to pay 30,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in reply to the civil action states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the automechanic Ćose Ćosić in the amount of 15,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes he has a claim towards the plaintiff of 30,000 HRK and requests of the court that it be set-off from the claim of the plaintiff.

Accept the plaintiff's claim and determine the ill-foundedness of the objection of the existence of the claim of the defendant due to set-off.

EXAMPLE 5

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received,

as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999. The court is requested to order the defendant to pay 30,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in reply to the civil action states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 15,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes he has a claim towards the plaintiff of 30,000 HRK and requests of the court that it be set-off from the claim of the plaintiff.

Render a decision on the plaintiff's claim and establish that the objection of the existence of the defendant's claim due to set-off is founded! Render a decision on costs!

EXAMPLE 6

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999.

The court is requested to order the defendant to pay 30,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in reply to the civil action states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 15,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes he has a claim towards the plaintiff of 30,000 HRK and requests of the court that it be set-off from the claim of the plaintiff.

Render a decision on the plaintiff's claim and establish that the objection of the existence of the defendant's claim due to set-off is partially founded! Render a decision on costs!

EXAMPLE 7

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999. The court is requested to order the defendant to pay 30,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in reply to the civil action states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 35,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes that he has a claim toward the plaintiff of 50,000 HRK and requests of the court that it be set-off from the claim of the plaintiff.

Render a decision on the plaintiff's claim and establish that the objection of the existence of the defendant's claim due to set-off is founded! Render a decision on costs!

EXAMPLE 8

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999. The court is requested to order the defendant to pay 30,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in the counterclaim states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did

not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 35,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes that he has a claim toward the plaintiff of 50,000 HRK and requests of the court that it orders the payment of the aforementioned amount, accepting the counterclaim.

Render a decision on the claims, whereupon the plaintiff's claim from the counterclaim is founded! Render a decision on costs!

EXAMPLE 9

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999. The court is requested to order the defendant to pay 30,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in the counterclaim states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 35,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes that he has a claim toward the

plaintiff of 50,000 HRK and requests of the court that it binds the plaintiff to pay the aforementioned amount.

The plaintiff subsequently points out that the dumping device for loose cargo was fully functional at the moment of concluding the sale agreement, and that it is faulty functioning was due to the defendant not following instructions for use and not using the envisaged grease. He proposes the expert evaluation of engineer Marko Marković. Apart from this he also states, even if the dumper was faulty for reasons for which the plaintiff would be liable, the defendant could not have earned income in the amount of 10,000 HRK in two weeks, as it is generally known how much he earns. To confirm this fact he proposes the expert evaluation of his business books from which it is evident that he does not earn the mentioned income, even during one month. The plaintiff further states that the repair of dumping devices for dumping of loose cargo is routinely carried out in repair shops and this within a period of not longer than two days.

Render a decision on the claim, whereupon the plaintiff's claim from the counterclaim is partially founded! Render a decision on costs!

EXAMPLE 10

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999. The court is requested to order the defendant to pay 40,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in a counterclaim states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned

fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 35,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes that, even if he owes an amount to the plaintiff, this could not be 40,000 HRK but rather a maximum of 30,000 HRK taking into account the middle rate of exchange of the Croatian National Bank for the Euro currency, as well as that he has a claim towards the plaintiff of 50,000 HRK. Therefore he requests that the court binds the plaintiff to pay the aforementioned amount.

The plaintiff subsequently points out that the dumping device for loose cargo was fully functional at the moment of concluding the sale agreement, and that it is faulty functioning was due to the defendant not following instructions for use and not using the envisaged grease. He proposes the expert evaluation of engineer Marko Marković. Apart from this he also states, even if the dumper was faulty for reasons for which the plaintiff would be liable, the defendant could not have earned income in the amount of 10,000 HRK in two weeks, as it is generally known how much he earns. To confirm this fact he proposes the expert evaluation of his business books from which it is evident that he does not earn the mentioned income, even during one month. The plaintiff further states that the repair of dumping devices for dumping of loose cargo is routinely carried out in repair shops and this within a period of not longer than two days.

Render a decision on the claims of the plaintiff and defendant – counter-plaintiff, whereupon both claims are partially founded! Render a decision on costs!

EXAMPLE 11

In the civil action lodged on the 10 March 2004 the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 2 years from the date of concluding the agreement i.e. 1 January 2006. He proposes that evidence is provided by presenting the agreement which was concluded on 1 January 2004. He was notified by the defendant that he does not have any intention to pay the remainder of the purchase price because the truck was supposedly faulty. We believe that the standpoint of the defendant is ill-founded and request the court to

order the defendant to pay 30,000 HRK with interest in arrears commencing from 1 January 2006 and compensation of litigation costs.

The defendant in his counterclaim states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 35,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes he has a claim towards the plaintiff of 50,000 HRK and requests of the court that it binds the plaintiff to pay the aforementioned amount.

The plaintiff subsequently points out that the dumping device for loose cargo was fully functional at the moment of concluding the sale agreement, and that it is faulty functioning was due to the defendant not following instructions for use and not using the envisaged grease. He proposes the expert evaluation of engineer Marko Marković. Apart from this he also states, even if the dumper was faulty for reasons for which the plaintiff would be liable, the defendant could not have earned income in the amount of 10,000 HRK in two weeks, as it is generally known how much he earns. To confirm this fact he proposes the expert evaluation of his business books from which it is evident that he does not earn the mentioned income, even during one month. The plaintiff further states that the repair of dumping devices for dumping of loose cargo is routinely carried out in repair shops and this within a period of not longer than two days.

Render the decision on the claim, whereupon the claim of the defendant – counterclaim is partially founded! Render a decision on costs!

EXAMPLE 12

In the civil action the plaintiff states that the defendant, due to reasons for which he is liable, caused him damage in the amount of 50,000 HRK. He claims that he parked his car of the brand Mercedes in a public car park which is located next to the construction site on which the defendant erected a crane for construction of a residential commercial building. A concrete block fell while the crane was working, in which manner the plaintiff was caused damage in the amount of 30,000 HRK. The plaintiff is a taxi driver and did not work for 2 months, which was the time required to repair the vehicle, so that he suffered additional damage in the amount of 20,000 HRK. It is proposed that the evidence is examined in the form of the invoice for repairs which was issued by the company authorised for repair and service of vehicles of the brand Mercedes.
It is requested that the defendant be ordered to pay the amount of 50,000 HRK and compensation of litigation costs.

The defendant in reply to the civil action states that the plaintiff should have known that work was being carried out next to the car park, and that the crane on the construction was adequately visible. Therefore by parking in the aforementioned location he accepted the possibility of the occurrence of damage. He also points out that on the aforementioned car park the company authorised to charge for parking tickets had stopped charging for parking tickets due to the fact that work was being carried out on the neighbouring property and damage could occur to the parked vehicles. It is proposed that evidence is examined by hearing from the legal representative of the company which is the holder of the concession for charging for parking. In any case he believes that the plaintiff did not incur damage to the amount mentioned, given that the damage was incurred to the front bonnet, and not to the motor of the vehicle, and also that the lost profit of the plaintiff does not amount to 20,000 HRK but rather a maximum of 10,000 HRK. The expert evaluation of the plaintiff’s business books is proposed.

Write a disposition of the interim judgment!

EXAMPLE 13

The plaintiff in the civil action states that he concluded a lease agreement with the defendant for an apartment located in Split at the address Marmontova 10 (apartment number 8 on the second floor of the residential building). He leased the apartment because he was employed on a ship. In the meantime he stopped working at this job and terminated the lease agreement of the defendant. However, the defendant refused to vacate the subject apartment and continues to use it. Aside from this, the defendant is using the apartment in a manner which causes damage, as after the termination of the agreement there was a water

overflow, in this manner damage was incurred to the plaintiff of an unknown amount because the defendant will not permit him to enter the apartment to establish the extent of the damage. It is proposed that an examination is carried out of the lease agreement for the apartment, the transcript on the attestation of facts which in relation to the handing over of the termination was drafted by the notary public Marko Marković, and the witness Šime Šimić who lives under the apartment owned by the plaintiff, and into which water has drained from the subject apartment.
The court is asked to order the defendant to handover to the plaintiff the subject apartment free of people and things, and to compensate damage, an amount which the plaintiff will specify after the court orders the defendant to enable a court expert in the construction field to examine the apartment.

The defendant is opposed to the plaintiff's claim in its entirety, not stating any facts.

Write a disposition of a partial judgment!

Work in groups (disposition and explanation)

EXAMPLE 1

The plaintiff claims that the defendant disturbed his possession because he placed 30 metres of wood on the access path, which the plaintiff has used for 20 years, and prevented him from passing. In relation to this fact an investigation is proposed and hearing of the witnesses Mile Milić, Stanko Stanić and Vera Verić.
The court is requested to establish disturbance of most recent state of possession given that the defendant on the date 12.01.2004 on the access path placed 30 metres of wood, that the defendant sets up the earlier state of possession by removal of the trees from the access path, and that he is banned from any further such or similar disturbance of his possession, and also to compensate the resulting litigation costs within a period 8 days.

The defendant in reply to the civil action states that it is correct that he placed 30 metres of wood on the aforementioned path, but that he is authorised to do this given that he owns the path and that the plaintiff, during the time period indicated in the claim, used it without legal basis.
He substantiates this fact with an excerpt from the land registry.

Draft a decision?

EXAMPLE 2

In the civil action the plaintiff states that he is the owner of the real estate entered in the land registry file 222 of the cadastral municipality Donja and this house number 1 with a surface area 1000 m^2. He also states that the defendant is the owner of the neighbouring real estate which is entered in the land registry file 333 of the cadastral municipality Donja and this house number 2 with a surface area of 500 m^2 and that there exists the right to real property servitude for movement of livestock and passing of pedestrians with a width of two metres along the entire western border of the real estate owned by the defendant with a length of 30 metres – in favour of the servient owner of the real estate which is owned by the plaintiff. It is stated that the plaintiff and his predecessors used this part of the real estate owned by the defendant for over forty years, and that servitude has been acquired by prescription. It is proposed that the witnesses Ana Anić and Miro Mirić be heard, who are acquainted with the fact that the plaintiff and his predecessors used the real estate owned by the defendant, for movement of livestock and passing of pedestrians, during the aforementioned time period.
The court is asked to establish the existence of the right to the aforementioned real property servitude and that the defendant is ordered to issue a title deed suitable for entry of such servitude into the land registry book, as on the contrary such a document will be replaced by the judgment rendered in the subject litigation, and compensation of the costs of the litigation.

The defendant in reply to the civil action states that the plaintiff and his predecessors only recently began using the real estate he owns – and this after the death of their father. Namely, after this event the defendant, due to renovation of the house situated on the disputed land, removed the existing fence for easier passing of trucks to it, after which the plaintiff began to use the same passage for his needs. Before removing the fence, for the passing of livestock and passing of pedestrians the plaintiff regularly carried out on the eastern side of the real estate he owns, and exceptionally, by using the entry door on the fence of the defendant with a width of one metre, shortening his path to the pasture which is located north of the cadastral plot 333 of the cadastral municipality Donja, which the defendant and his predecessors did not object to due to their good neighbourly relationship. He in particular states that the plaintiff can reach the mentioned pasture even without passing across the land owned by the defendant and even if there existed servitude for passing of livestock and passing of pedestrians in favour of the servient owner of the land owned by the plaintiff it could not be in this range, i.e. 2 metres, but rather at the most 1 metre. In regard to the aforementioned facts it is proposed that an investigation is carried out, and also that the witnesses Luka Lukić and Pero Perić be heard. It is proposed to the court to reject the plaintiff's claim and to order him to compensate the litigation costs.

Draft a judgment in which the plaintiff's claim is rejected its entirety!
(Draft a judgment without an introduction and without listing the claims of the parties. Statements about evidence and their evaluation – by free choice)

EXAMPLE 3

In the civil action the plaintiff states that he is the owner of the real estate entered in the land registry file 222 of the cadastral municipality Donja and this house number 1 with a surface area 1000 m^2. He also states that the defendant is the owner of the neighbouring real estate which is entered in the land registry file 333 of the cadastral municipality Donja and this house number 2 with a surface area of 500 m^2 and that there exists the right to real property servitude for movement of livestock and passing of pedestrians with a width of two metres along the entire western border of the real estate owned by the defendant with a length of 30 metres – in favour of the servient owner of the real estate which is owned by the plaintiff. It is stated that the plaintiff and his predecessors used this part of the real estate owned by the defendant for over forty years, and that servitude has been acquired by prescription. It is proposed that the witnesses Ana Anić and Miro Mirić be heard, who are acquainted with the fact that the plaintiff and his predecessors used the real estate owned by the defendant, for movement of livestock and passing of pedestrians, during the aforementioned time period.
The court is asked to establish the existence of the right to the aforementioned real property servitude and that the defendant is ordered to issue a title deed suitable for entry of such servitude into the land registry book, as on the contrary such a document will be replaced by the judgment rendered in the subject litigation, and compensation of the costs of the litigation.

The defendant in reply to the civil action states that the plaintiff and his predecessors only recently began using the real estate he owns – and this after the death of their father. Namely, after this event the defendant, due to renovation of the house situated on the disputed land, removed the existing fence for easier passing of trucks to it, after which the plaintiff began to use the same passage for his needs. Before removing the fence, for the passing of livestock and passing of pedestrians the plaintiff regularly carried out on the eastern side of the real estate he owns, and exceptionally, by using the entry door on the fence of the defendant with a width of one metre, shortening his path to the pasture which is located north of the cadastral plot 333 of the cadastral municipality Donja, which the defendant and his predecessors did not object to due to their good neighbourly relationship. He in particular states that the plaintiff can reach the mentioned pasture even without passing across the land owned by the defendant and even if there existed servitude for passing of livestock and passing of pedestrians in favour of the servient owner of the land owned by the plaintiff it could not be in this range, i.e. 2 metres, but rather at the most 1 metre. In regard to the aforementioned facts it is proposed that an investigation is

carried out, and also that the witnesses Luka Lukić and Pero Perić be heard. It is proposed to the court to reject the plaintiff's claim and to order him to compensate the litigation costs.

Draft a judgment in which the plaintiff's claim is accepted its entirety!
(Draft a judgment without an introduction and without listing the claims of the parties. Statements about evidence and their evaluation – by free choice)

EXAMPLE 4

In the civil action the plaintiff states that he is the owner of the real estate entered in the land registry file 222 of the cadastral municipality Donja and this house number 1 with a surface area 1000 m^2. He also states that the defendant is the owner of the neighbouring real estate which is entered in the land registry file 333 of the cadastral municipality Donja and this house number 2 with a surface area of 500 m^2 and that there exists the right to real property servitude for movement of livestock and passing of pedestrians with a width of two metres along the entire western border of the real estate owned by the defendant with a length of 30 metres – in favour of the servient owner of the real estate which is owned by the plaintiff. It is stated that the plaintiff and his predecessors used this part of the real estate owned by the defendant for over forty years, and that servitude has been acquired by prescription. It is proposed that the witnesses Ana Anić and Miro Mirić be heard, who are acquainted with the fact that the plaintiff and his predecessors used the real estate owned by the defendant, for movement of livestock and passing of pedestrians, during the aforementioned time period.
The court is asked to establish the existence of the right to the aforementioned real property servitude and that the defendant is ordered to issue a title deed suitable for entry of such servitude into the land registry book, as on the contrary such a document will be replaced by the judgment rendered in the subject litigation, and compensation of the costs of the litigation.

The defendant in reply to the civil action states that the plaintiff and his predecessors only recently began using the real estate he owns – and this after the death of their father. Namely, after this event the defendant, due to renovation of the house situated on the disputed land, removed the existing fence for easier passing of trucks to it, after which the plaintiff began to use the same passage for his needs. Before removing the fence, for the passing of livestock and passing of pedestrians the plaintiff regularly carried out on the eastern side of the real estate he owns, and exceptionally, by using the entry door on the fence of the defendant with a width of one metre, shortening his path to the pasture which is located north of the cadastral plot 333 of the cadastral municipality Donja, which the defendant and his predecessors did not object to due to their good neighbourly relationship. He in particular states that the plaintiff can reach the mentioned pasture even without passing across the land owned by the defendant and even if there existed servitude for passing of livestock and

passing of pedestrians in favour of the servient owner of the land owned by the plaintiff it could not be in this range, i.e. 2 metres, but rather at the most 1 metre. In regard to the aforementioned facts it is proposed that an investigation is carried out, and also that the witnesses Luka Lukić and Pero Perić be heard. It is proposed to the court to reject the plaintiff's claim and to order him to compensate the litigation costs.

Draft a judgment in which the plaintiff's claim is partially accepted! Render a decision on costs!
(Draft a judgment without an introduction and without listing the claims of the parties. Statements about evidence and their evaluation – by free choice)

EXAMPLE 5

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999. The court is requested to order the defendant to pay 30,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in reply to the civil action states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 15,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes he has a claim towards the plaintiff

of 30,000 HRK and requests of the court that it be set-off from the claim of the plaintiff.

Draft a judgment in which the plaintiff's claim is accepted, and the objection about the existence of claim toward the defendant due to set-off is not founded!
(Draft a judgment without an introduction and without listing the claims of the parties. Statements about evidence and their evaluation – by free choice)

EXAMPLE 6

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999. The court is requested to order the defendant to pay 30,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in reply to the civil action states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 15,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes he has a claim towards the plaintiff of 30,000 HRK and requests of the court that it be set-off from the claim of the plaintiff.

Draft a judgment in which a decision is rendered about the plaintiff's claim and establish that the objection about the existence of a claim towards the defendant due to set-off is founded! Render a decision about costs!
(Draft a judgment without an introduction and without listing the claims of the parties. Statements about evidence and their evaluation – by free choice)

EXAMPLE 7

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999. The court is requested to order the defendant to pay 30,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in reply to the civil action states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 15,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes he has a claim towards the plaintiff of 30,000 HRK and requests of the court that it be set-off from the claim of the plaintiff.

Draft a judgment in which a decision is rendered about the plaintiff's claim and establish that the objection about the existence of a claim towards the defendant due to set-off is partially founded!
(Draft a judgment without an introduction and without listing the claims of the parties. Statements about evidence and their evaluation – by free choice)

EXAMPLE 8

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999. The court is requested to order the defendant to pay 30,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in reply to the civil action states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 35,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes he has a claim towards the plaintiff of 50,000 HRK and requests of the court that it be set-off from the claim of the plaintiff.

Draft a judgment in which a decision is rendered about the plaintiff's claim and establish that the objection about the existence of a claim toward the defendant due to set-off is founded! Render a decision on costs!
(Draft a judgment without an introduction and without listing the claims of the parties. Statements about evidence and their evaluation – by free choice)

EXAMPLE 9

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999. The court is requested to order the defendant to pay 30,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in the counterclaim states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 35,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes he has a claim towards the plaintiff of 50,000 HRK and requests of the court that it orders the payment of the aforementioned amount, accepting the counterclaim.

The plaintiff subsequently points out that the dumping device for loose cargo was fully functional at the moment of concluding the sale agreement, and that it is faulty functioning was due to the defendant not following instructions for use and not using the envisaged grease. He proposes the expert evaluation of engineer Marko Marković. Apart from this he also states, even if the dumper was faulty for reasons for which the plaintiff would be liable, the defendant could not have earned income in the amount of 10,000 HRK in two weeks, as it is generally known how much he earns. To confirm this fact he proposes the expert evaluation of his business books from which it is evident that he does not earn the mentioned income, even during one month. The plaintiff further states that the repair of dumping devices for dumping of loose cargo is routinely carried out in repair shops and this within a period of not longer than two days.

Draft a judgment according to which only the claim from the counterclaim is founded! Render a decision on costs!
(Draft a judgment without an introduction and without listing the claims of the parties. Statements about evidence and their evaluation – by free choice)

EXAMPLE 10

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999. The court is requested to order the defendant to pay 30,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in the counterclaim states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 35,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes he has a claim towards the plaintiff of 50,000 HRK and requests of the court that it orders the payment of the aforementioned amount, accepting the counterclaim.

Draft a judgment according to which the plaintiff's claim is accepted and the claim of the defendant – counterplaintiff is partially accepted! Render a decision on costs!

(Draft a judgment without an introduction and without listing the claims of the parties. Statements about evidence and their evaluation – by free choice)

EXAMPLE 11

In the civil action the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 3 months from the date of concluding the agreement. It is proposed that evidence is provided by presenting the agreement which was concluded on 1 February 1999. The court is requested to order the defendant to pay 40,000 HRK with the legal interest in arrears commencing on 1 May 1999 and compensation of litigation costs.

The defendant in a counterclaim states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 35,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes that, even if he owes an amount to the plaintiff, this could not be 40,000 HRK but rather a maximum of 30,000 HRK taking into account the middle rate of exchange of the Croatian National Bank for the Euro currency, as well as that the plaintiff owes him the amount of 50,000 HRK. Therefore he requests that the court binds the plaintiff to pay the aforementioned amount.

Draft a judgment according to which the claims of the plaintiff and defendant – counterplaintiff are accepted! Render a decision on costs!

(Draft a judgment without an introduction and without listing the claims of the parties. Statements about evidence and their evaluation – by free choice)

EXAMPLE 12

In the civil action lodged on the 10 March 2004 the plaintiff states that he sold the defendant a truck with a dumping device for loose cargo (dumper) for the purchase price of 10,000 Euro according to the middle exchange rate of the Croatian National Bank on the date of execution of the payment. Upon concluding the sale agreement he received, as part of the purchase price, the amount of 6,000 Euro, and the defendant pledged to pay the remainder of the purchase price within a period of 2 years from the date of concluding the agreement i.e. 1 January 2006. He proposes that evidence is provided by presenting the agreement which was concluded on 1 January 2004. He was notified by the defendant that he does not have any intention to pay the remainder of the purchase price because the truck was supposedly faulty. We believe that the standpoint of the defendant is ill-founded and request the court to order the defendant to pay 30,000 HRK with interest in arrears commencing from 1 January 2006 and compensation of litigation costs.

The defendant in his counterclaim states that it is correct that he concluded a sale contract of the aforementioned content with the plaintiff, however that the truck which he purchased from the plaintiff was faulty, and this in the part which is essential for his economic exploitation. Namely, the dumping device for loose cargo (dumper) is not in working order, which he notice when he attempted to use it for the first time. To confirm this fact he proposes hearing of the witness Ivo Ivić which whom he concluded an agreement for the transport of sand for the construction of his house, and he could not fulfil his obligation and therefore did not earn income of 5,000 HRK. He notified the plaintiff about the aforementioned fault, however he refused to carry out the repair of the truck. In relation to this circumstance he proposes hearing the witness Marica Marić who was present during their conversation. He carried out repair of the dumping device for loose cargo at his own expenses and encloses the invoice of the auto mechanic Ćose Ćosić in the amount of 35,000 HRK. The repair lasted two weeks, in which time the defendant was not able to work as a transporter and did not earn the expected income of 10,000 HRK. He believes he has a claim towards the plaintiff of 50,000 HRK and requests of the court that it binds the plaintiff to pay the aforementioned amount.

Draft a judgment according to which the plaintiff's claim is accepted and the claim of the defendant – counterplaintiff is partially accepted! Render a decision on costs!

(Draft a judgment without an introduction and without listing the claims of the parties. Statements about evidence and their evaluation – by free choice)

EXAMPLE 13

In the civil action the plaintiff states that the defendant, due to reasons for which he is liable, caused him damage in the amount of 50,000 HRK. He claims that he parked his car of the brand Mercedes in a public car park which is located next to the construction site on which the defendant erected a crane for construction of a residential commercial building. A concrete block fell while the crane was working, in which manner the plaintiff was caused damage in the amount of 30,000 HRK. The plaintiff is a taxi driver and did not work for 2 months, which was the time required to repair the vehicle, so that he suffered additional damage in the amount of 20,000 HRK. It is proposed that the evidence is examined in the form of the invoice for repairs which was issued by the company authorised for repair and service of vehicles of the brand Mercedes.
It is requested that the defendant be ordered to pay the amount of 50,000 HRK and compensation of litigation costs.
The defendant in reply to the civil action states that the plaintiff should have known that work was being carried out next to the car park, and that the crane on the construction was adequately visible. Therefore by parking in the aforementioned location he accepted the possibility of the occurrence of damage. He also points out that on the aforementioned car park the company authorised to charge for parking tickets had stopped charging for parking tickets due to the fact that work was being carried out on the neighbouring property and damage could occur to the parked vehicles. It is proposed that evidence is examined by hearing from the legal representative of the company which is the holder of the concession for charging for parking. In any case he believes that the plaintiff did not incur damage to the amount mentioned, given that the damage was incurred to the front bonnet, and not to the motor of the vehicle, and also that the lost profit of the plaintiff does not amount to 20,000 HRK but rather a maximum of 10,000 HRK. The expert evaluation of the plaintiff's business books is proposed.

Draft an interim judgment!
(Draft a judgment without an introduction and without listing the claims of the parties. Statements about evidence and their evaluation – by free choice)

EXAMPLE 14

In the civil action the plaintiff states that the defendant, due to reasons for which he is liable, caused him damage in the amount of 50,000 HRK. He claims that he parked his car of the brand Mercedes in a public car park which is located next to the construction site on which the defendant erected a crane for construction of a

residential commercial building. A concrete block fell while the crane was working, in which manner the plaintiff was caused damage in the amount of 30,000 HRK. The plaintiff is a taxi driver and did not work for 2 months, which was the time required to repair the vehicle, so that he suffered additional damage in the amount of 20,000 HRK. It is proposed that the evidence is examined in the form of the invoice for repairs which was issued by the company authorised for repair and service of vehicles of the brand Mercedes.
It is requested that the defendant be ordered to pay the amount of 50,000 HRK and
compensation of litigation costs.

The defendant in reply to the civil action states that the plaintiff should have known that work was being carried out next to the car park, and that the crane on the construction was adequately visible. Therefore by parking in the aforementioned location he accepted the possibility of the occurrence of damage. He also points out that on the aforementioned car park the company authorised to charge for parking tickets had stopped charging for parking tickets due to the fact that work was being carried out on the neighbouring property and damage could occur to the parked vehicles. It is proposed that evidence is examined by hearing from the legal representative of the company which is the holder of the concession for charging for parking. In any case he believes that the plaintiff did not incur damage to the amount mentioned, given that the damage was incurred to the front bonnet, and not to the motor of the vehicle, and also that the lost profit of the plaintiff does not amount to 20,000 HRK but rather a maximum of 10,000 HRK. The expert evaluation of the plaintiff's business books is proposed.

Draft a judgment in which the plaintiff's claim is rejected!
(Draft a judgment without an introduction and without listing the claims of the parties. Statements about evidence and their evaluation – by free choice)

EXAMPLE 15

The plaintiff in the civil action states that he concluded a lease agreement with the defendant for an apartment located in Split at the address Marmontova 10 (apartment number 8 on the second floor of the residential building). He leased the apartment because he was employed on a ship. In the meantime he stopped working at this job and terminated the lease agreement of the defendant. However, the defendant refused to vacate the subject apartment and continues to use it. Aside from this, the defendant is using the apartment in a manner which causes damage, as after the termination of the agreement there was a water overflow, in this manner damage was incurred to the plaintiff of an unknown amount because the defendant will not permit him to enter the apartment to establish the extent of the damage. It is proposed that an examination is carried

out of the lease agreement for the apartment, the transcript on the attestation of facts which in relation to the handing over of the termination was drafted by the notary public Marko Marković, and the witness Šime Šimić who lives under the apartment owned by the plaintiff, and into which water has drained from the subject apartment.
The court is asked to order the defendant to handover to the plaintiff the subject apartment free of people and things, and to compensate damage, an amount which the plaintiff will specify after the court orders the defendant to enable a court expert in the construction field to examine the apartment.

The defendant is opposed to the plaintiff's claim in its entirety, not stating any facts.

Draft an interim judgment!
(Draft a judgment without an introduction and without listing the claims of the parties.
Statements about evidence and their evaluation – by free choice)

EXAMPLE 16

The plaintiff in the civil action states that he concluded a lease agreement with the defendant for an apartment located in Split at the address Marmontova 10 (apartment number 8 on the second floor of the residential building). He leased the apartment because he was employed on a ship. In the meantime he stopped working at this job and terminated the lease agreement of the defendant. However, the defendant refused to vacate the subject apartment and continues to use it. Aside from this, the defendant is using the apartment in a manner which causes damage, as after the termination of the agreement there was a water overflow, in this manner damage was incurred to the plaintiff of an unknown amount because the defendant will not permit him to enter the apartment to establish the extent of the damage. It is proposed that an examination is carried out of the lease agreement for the apartment, the transcript on the attestation of facts which in relation to the handing over of the termination was drafted by the notary public Marko Marković, and the witness Šime Šimić who lives under the apartment owned by the plaintiff, and into which water has drained from the subject apartment.
The court is asked to order the defendant to handover to the plaintiff the subject apartment free of people and things, and to compensate damage, an amount which the plaintiff will specify after the court orders the defendant to enable a court expert in the construction field to examine the apartment.

The defendant is opposed to the plaintiff's claim in its entirety, not stating any facts.

Draft a judgment in which you render a decision on all the plaintiff's claims.
(Draft a judgment without an introduction and without listing the claims of the parties.
Statements about evidence and their evaluation – by free choice)

EXAMPLE 17

The plaintiff is the owner of a motor boat – yacht for leisure and on 1 May 2002 he concluded an agreement with the defendant according to which the defendant committed to commercially exploit the same by renting it, and upon expiry of the time period for which the agreement was concluded, that is, 1.11.2002 pay the plaintiff half the earned profit. According to the agreement the profit was to be established exclusively by deducting the costs listed in it (wages of the captain – skipper and costs of cleaning the boat) from the total income earned by rental. It is proposed that the subject agreement is examined. On 1.11.2002 the defendant handed over the subject yacht to the plaintiff and handed him the calculation of profit, and paid him the amount of 10,000 HRK, keeping in mind that the yacht was only rented once during the mentioned time period and this in the period from 01.08 to 08.08.2002. Subsequently the plaintiff found out that the yacht had incurred a shipwreck, and that the resulting damage was reported to the insurance company Naša sigurnost d.d., which compensated the damage by paying the repair bill. The damage occurred in Split, in the time period when the boat was supposedly not be used for the aforementioned commercial purposes. The examination of the business books of the insurance company is proposed. Given the location of the shipwreck, the plaintiff believes that the defendant was also renting the boat at this time and failed to disclose these details about his commercial exploitation secret. Later on the plaintiff acquired data from the port authorities in Makarska, Dubrovnik, Rovinj, Bol, Hvar and Korčula, according to which the yacht had sailed into all the aforementioned ports, from which it also ensues that he failed to disclose all the details about income, as it is almost unbelievable that such navigation was carried out without passengers. From discussions with the captain of the boat he received information that there were various people on the boat who spoke German and English, however he did not know whether they rented the boat or were guests of the defendant. An examination of the documents of the port authorities about navigation and hearing of Duje Dujić who carried out the duty of captain of the boat are proposed.

The court is requested to order the defendant to pay a monetary amount which he will establish after the defendant hands over the business books to the plaintiff for the purpose of expert examination and compensation of litigation costs.

The defendant in his reply to the civil action objects to the claim and claims that he rented the yacht only once, and also that navigation in the ports listed in the claim was carried out without renting, that is, that he used it for his own needs by

allowing his business partners to use the boat free of charge. He states the same in regards to the shipwreck.

Draft a judgment!
(Draft a judgment without an introduction and without listing the claims of the parties.
Statements about evidence and their evaluation – by free choice)

EXAMPLE 18

The plaintiff in the civil action states that he concluded a lease agreement with the defendant for an apartment located in Split at the address Marmontova 10 (apartment number 8 on the second floor of the residential building). He leased the apartment because he was employed on a ship. In the meantime he stopped working at this job and terminated the lease agreement of the defendant. However, the defendant refused to vacate the subject apartment and continues to use it. Aside from this, the defendant is using the apartment in a manner which causes damage, as after the termination of the agreement there was a water overflow, in this manner damage was incurred to the plaintiff of an unknown amount because the defendant will not permit him to enter the apartment to establish the extent of the damage. It is proposed that an examination is carried out of the lease agreement for the apartment, the transcript on the attestation of facts which in relation to the handing over of the termination was drafted by the notary public Marko Marković, and the witness Šime Šimić who lives under the apartment owned by the plaintiff, and into which water has drained from the subject apartment.
The court is asked to order the defendant to handover to the plaintiff the subject apartment free of people and things, and to compensate damage, an amount which the plaintiff will specify after the court orders the defendant to enable a court expert in the construction field to examine the apartment.

The defendant did not submit a written reply to the civil action.

Draft a partial default judgment!
(Draft a judgment without an introduction and without listing the claims of the parties.)

EXAMPLE 19

In the civil action the plaintiff states that the defendant, due to reasons for which he is liable, caused him damage in the amount of 50,000 HRK. He claims that he parked his car of the brand Mercedes in a public car park which is located next to the construction site on which the defendant erected a crane for construction of a residential commercial building. A concrete block fell while the crane was working, in which manner the plaintiff was caused damage in the amount of 30,000 HRK. The plaintiff is a taxi driver and did not work for 2 months, which was the time required to repair the vehicle, so that he suffered additional damage in the amount of 20,000 HRK. It is proposed that the evidence is examined in the form of the invoice for repairs which was issued by the company authorised for repair and service of vehicles of the brand Mercedes.
It is requested that the defendant be ordered to pay the amount of 50,000 HRK and
compensation of litigation costs.

The defendant did not submit a written reply to the civil action.

The court has set a preliminary hearing at which the plaintiff stated that he stands by his claim in its entirety and requests the rendering of a default judgment.

Draft a judgment!
(Draft a judgment without an introduction and without listing the claims of the parties.)

EXAMPLE 20

In the civil action the plaintiff states that the defendant, due to reasons for which he is liable, caused him damage in the amount of 50,000 HRK. He claims that he parked his car of the brand Mercedes in a public car park which is located next to the construction site on which the defendant erected a crane for construction of a residential commercial building. A concrete block fell while the crane was working, in which manner the plaintiff was caused damage in the amount of 30,000 HRK. The plaintiff is a taxi driver and did not work for 2 months, which was the time required to repair the vehicle, so that he suffered additional damage in the amount of 20,000 HRK. It is proposed that the evidence is examined in the form of the invoice for repairs which was issued by the company authorised for repair and service of vehicles of the brand Mercedes.
It is requested that the defendant be ordered to pay the amount of 50,000 HRK and
compensation of litigation costs.

The defendant did not submit a written reply to the civil action.

The court set a preliminary hearing at which the plaintiff stated that he stands by his claim in its entirety and requests the rendering of a default judgment. Additionally he adds that he has set a claim in the amount of 50,000 HRK because the repair of his car lasted 2 months during which time period he did not earn income of 20,000 HRK which he regularly earns as a taxi driver. In regard to this fact he encloses a confirmation of the tax administration on average monthly income during the year preceding the year in which the damage occurred.

How to proceed?

EXAMPLE 21

The plaintiff in the civil action lodged on 1 December 2003 states that he the owner of a motor boat – yacht for leisure, as well as that on 1 May 2002 he concluded an agreement with the defendant according to which the defendant committed to commercially exploit the same by renting it, and upon expiry of the time period for which the agreement was concluded, that is, 1.11.2002 pay the plaintiff half the earned profit. According to the agreement the profit was to be established exclusively by deducting the costs listed in it (wages of the captain – skipper and costs of cleaning the boat) from the total income earned by rental. It is proposed that the subject agreement is examined. On 1.11.2002 the defendant handed over the subject yacht to the plaintiff and handed him the calculation of profit, and paid him the amount of 10,000 HRK, keeping in mind that the yacht was only rented once during the mentioned time period and this in the period from 01.08 to 08.08.2002. Subsequently the plaintiff found out that the yacht had incurred a shipwreck, and that the resulting damage was reported to the insurance company Naša sigurnost d.d., which compensated the damage by paying the repair bill. The damage occurred in Split, in the time period when the boat was supposedly not be used for the aforementioned commercial purposes. The examination of the business books of the insurance company is proposed. Given the location of the shipwreck, the plaintiff believes that the defendant was also renting the boat at this time and failed to disclose these details about his commercial exploitation secret. Later on the plaintiff acquired data from the port authorities in Makarska, Dubrovnik, Rovinj, Bol, Hvar and Korčula, according to which the yacht had sailed into all the aforementioned ports, from which it also ensues that he failed to disclose all the details about income, as it is almost unbelievable that such navigation was carried out without passengers. From discussions with the captain of the boat he obtained the information that during 6 consecutive weeks there were various people on the boat who paid a weekly rental of 30,000 HRK. An examination of the documents of the port authorities about navigation and hearing of Duje Dujić who carried out the duty of captain of the boat are proposed.

The court is requested to order the defendant to pay 90,000 HRK within a period of 8 days from the date of the legal validity of the judgment and compensation of litigation costs.

The defendant in reply to the civil action admits that he earned additional income of 180,000 HRK which he did not show in the calculation due to the fact that there was an agreement between him and the plaintiff that the aforementioned amount should not be entered into the business books to reduce tax liabilities. He also states that in regard to the realisation of this income he had costs which according to the agreements are reduced for the purpose of calculation of profit (wage of the captain – skipper, cleaning costs) in the amount of 40,000 HRK which were also not entered into the business books, and that the plaintiff consented to having his portion of the profit paid by 1 May 2003. The hearing of the parties is proposed. As a consequence of the aforementioned, he partially recognises the plaintiff's claim in the amount of 70,000 HRK which is the amount he obliges to pay on 1 May 2003 and proposes that the remaining part of the plaintiff's claim is rejected.
During the main hearing, the plaintiff states that the existence of the agreement to which the defendant refers is not correct. The witness Duje Dujić states that it is correct that the boat was rented during 6 consecutive weeks and that he found out about the aforementioned amount through conversations with the people with whom the rent agreements were concluded. He claims that he did not receive any remuneration for his work.

Draft a judgment! Render a decision on costs!
(Draft a judgment without an introduction and without listing the claims of the parties.
Statements about evidence and their evaluation – by free choice)

EXAMPLE 22

The plaintiff in the civil action lodged on 1 December 2003 states that he the owner of a motor boat – yacht for leisure, as well as that on 1 May 2002 he concluded an agreement with the defendant according to which the defendant committed to commercially exploit the same by renting it, and upon expiry of the time period for which the agreement was concluded, that is, 1.11.2002 pay the plaintiff half the earned profit. According to the agreement the profit was to be established exclusively by deducting the costs listed in it (wages of the captain – skipper and costs of cleaning the boat) from the total income earned by rental. It is proposed that the subject agreement is examined. On 1.11.2002 the defendant handed over the subject yacht to the plaintiff and handed him the calculation of profit, and paid him the amount of 10,000 HRK, keeping in mind that the yacht was only rented once during the mentioned time period and this in the period from 01.08 to 08.08.2002. Subsequently the plaintiff found out that the yacht had incurred a shipwreck, and that the resulting damage was reported to the insurance company Naša sigurnost d.d., which compensated the damage by

paying the repair bill. The damage occurred in Split, in the time period when the boat was supposedly not be used for the aforementioned commercial purposes. The examination of the business books of the insurance company is proposed. Given the location of the shipwreck, the plaintiff believes that the defendant was also renting the boat at this time and failed to disclose these details about his commercial exploitation secret. Later on the plaintiff acquired data from the port authorities in Makarska, Dubrovnik, Rovinj, Bol, Hvar and Korčula, according to which the yacht had sailed into all the aforementioned ports, from which it also ensues that he failed to disclose all the details about income, as it is almost unbelievable that such navigation was carried out without passengers. From discussions with the captain of the boat he obtained the information that during 6 consecutive weeks there were various people on the boat who paid a weekly rental of 30,000 HRK. An examination of the documents of the port authorities about navigation and hearing of Duje Dujić who carried out the duty of captain of the boat are proposed.

The court is requested to order the defendant to pay 90,000 HRK within a period of 8 days from the date of the legal validity of the judgment and compensation of litigation costs.

The defendant in reply to the civil action admits that he earned additional income of 10,000 HRK a week, that is, a total of 60,000 HRK which he did not show in the calculation due to the fact that there was an agreement between him and the plaintiff that the aforementioned amount should not be entered into the business books to reduce tax liabilities. He also states that in regard to the realisation of this income he had costs which according to the agreements are reduced for the purpose of calculation of profit (wage of the captain – skipper, cleaning costs) in the amount of 40,000 HRK which were also not entered into the business books, and that the plaintiff consented to having his portion of the profit paid by 1 May 2003. The hearing of the parties is proposed. As a consequence of the aforementioned, the plaintiff could subsequently only ask for the amount of 10,000 HRK and this after the due date of the defendant's liability.
During the main hearing, the plaintiff states that the existence of the agreement to which the defendant refers is not correct. The witness Duje Dujić states that it is correct that the boat was rented during 6 consecutive weeks and this for the aforementioned amount of 30,000 HRK weekly which he discovered through conversations with people who concluded rent agreements. He claims that he did not receive any remuneration for his work.

Draft a judgment!
(Draft a judgment without an introduction and without listing the motions of the parties. Statements about evidence and their examination – by free choice).

Problem questions for discussion

Given the envisaged duration of the workshop (6 hours), following are given a number of problem questions for short discussion among the participants. Their purpose is to make the workshop interesting for the participants, and enable their active participation (especially in the matter of lengthy parts). However, they can be used in any part of holding the workshop. Tutors may supplement this part of the material according to their own choice and practical experiences.
Of course, given that structure of the participants of the workshop or available time, they may consider not to use this part of the manual at all.

1. All the conditions for rendering a default judgment exist, however from the listed facts it ensues that the plaintiff should lodge a different claim. How will you proceed and how will you explain your decision?

2. All the conditions for rendering a default judgment exist, however from the listed facts it ensues that the plaintiff should lodge a different claim for a lesser cash amount. How will you proceed and how will you explain your decision?

3. All the conditions for rendering a default judgment exist, however from the listed facts it ensues that the plaintiff should lodge a different claim. The plaintiff has not altered the claim, however has put forward new facts and evidence from which the foundedness of his claim ensues. How will you proceed?

4. The plaintiff asked for the payment of 10,000 HRK, while the court rendered a judgment which in the disposition contains the liability of the defendant to pay 1,000 HRK. The disposition does not contain an indication that the remaining part of the claim is refused. In which case will you execute a correction of the aforementioned judgment and in which case will you render an additional judgment?

Recommended literature

Alagić, Iura novit curia kod saznanja stranog prava, Godišnjak Pravnog fakulteta u Sarajevu XV/67;
Cini, Pravila o teretu dokazivanja, Zagreb, 1988 (mag. rad);
Čalija, Pravna i činjenična pitanja u procesu primjene prava, Godišnjak Pravnog fakulteta u Sarajevu XV/67;
Čizmić, Izostanak tuženika kao pretpostavka za donošenje presude zbog izostanka, Zbornik radova Pravnog fakulteta u Splitu, 35/1-2 (49-50):1998;
Čizmić, Osporavanje tužbenog zahtjeva kao pretpostavka za donošenje presude zbog izostanka u bosanskohercegovačkom pravu, Zbornik Pravnog fakulteta u Mostaru, 13, 2000;
Čizmić, Presuda zbog izostanka u građanskom parničnom postupku, Split, 2001;
Čizmić, Uredan poziv - pretpostavka za donošenje presude zbog izostanka, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 19/suppl/1998;
Črnko, Nepostojeća presuda u svezi eventualne kumulacije, Odvjetnik, 70/7-8:1997;
Dika, Izvršenje sudskih presuda kojima je naloženo plaćanje stare devizne štednje, Zakonitost, 47/8-12:1993;
Durante, La prova del diritto straniero richiamato dalle norme di diritto internazionale privato, Annuario di diritto comparato e di studi legislativi 1953;
Hill, Conflict of Laws: Foreign Law as Datum, CaLR 1/65;
Jakovina, Razmišljanja uz pretpostavke za donošenje presude zbog izostanka, Hrvatska pravna revija, 1:6/2001;
Korać, Obiteljskopravni instituti u presudama Europskog suda za prava čovjeka, Zagreb, 1996 (mag. rad) ;
Meier, Iura novit curia, 1975;
Nussbaum, The Problem of Proving Foreign Law, YLJ 50/51;
Pavlović, Značaj primjene pravila o teretu dokazivanja u parničnom postupku, Hrvatska gospodarska revija, 2:2000;
Požun, Kamatni zahtjevi u presudama zbog izostanka, Odvjetnik, 67/11-12:1994;
Radolović, Pravomoćnost (i definitivnost) sudske presude i nemogućnost odnosno nedopustivost sadržaja ili predmeta obveze, Vladavina prava, 2/6:1998;
Radolović, Suđenje osnovom pravičnosti, diskreciono ovlaštenje suca i slobodna ocjena dokaza, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 19/1998;
Radovčić, Pravna izreka Unus testis nullus testis - problemi datacije kao formalnog dokaznog pravila, Zbornik Pravnog fakulteta u Zagrebu, 48/5:1998;
Sass, Foreign Law in Civil Litigation, AJCL 16/68;
Schnitzer, Die Anwendung einheimischen oder fremden Rechts auf internationale Tatbestande, ZR 1969; Yassee, Problèmes relatifs à l'application du droit étranger, RC 1962
Šagovac, Podjela tereta dokazivanja kod građanskopravne odgovornosti za štetu, Zagreb, 1987;
Šagovac, Teret dokazivanja i slobodna ocjena dokaza u parničnom postupku, Odvjetnik, 3-4:1988;
Uzelac, Alan, Teret dokazivanja, Zagreb, 1999 (dok. dis.) ;
Župić, Izvršenje radi naplate novčanog potraživanja sankcioniranog pravomoćnom kondemnatornom presudom, Stručne informacije za poduzeća i druge pravne osobe, 43/1:1994.

Recommendations for use of working material

a) For use during the workshop:

The use of PowerPoint and word presentations is recommended during the appropriate stage of the workshop. There exists an alternative possibility of use of wider PowerPoint presentation which is enclosed in electronic form.

b) After the seminar

The participants of the workshop should be given the word presentation and all examples of work in groups, recommended literature and problem questions for discussion.

CURRICULUM VITAE

1. **Family name** **PROETEL**
2. **First name** Horst
3. **Date of birth** 27.02.1937
4. **Nationality** German
5. **Civil status** married, three grown-up children
6. **Education**

Institution [Date from-Date to]	Degree(s) or Diploma(s) obtained
Legal Studies, University of Marburg/Lahn and Frankfurt/M, 1957 – 1961	1st State Exam in Law
Trainee in the judicial service of various courts, public.prosecutor offices, public administration, inclusive post- graduate studies (4 months) at the Academy for Administrative Law.in Speyer, 1961 - 1965	2nd State Exam in Law (equivalent to Master of Law, admission to the Bar)
Postgraduate Studies in .comparative law and civil procedural law, University: Saarbruecken, 1968 – 1969	Doctor of Jurisprudence - Law

7. **Language skills:** Indicate competence on a scale of 1 to 5 (1 - excellent; 5 - basic)

Language	Reading	Speaking	Writing
English	1	1	1
German	1	1	1
French	1	3	2
Serbian	5	5	5

8. **Membership of professional bodies**
   - German Jurist's Organization (" Deutscher Richterbund")
   - German Jurist's Day („ Deutscher Juristentag e. V.")
   - Former Students of the Academy at The Hague
   - Juridical Study Associations in Jena and Erfurt
   - Chairman of two Ecclesiastical Disciplinary Courts
   - Board member of the Thueringian Judges' Organization; Chairman of the representation council of Judges in Thueringia
9. **Other skills:** Computer literate for Windows, Word, Excel, Powerpoint
10. **Present position : Free-lance legal expert (retired judge since 2002)**
11. **Years within the firm : n/a**
12. **Key qualifications (Relevant to the programme)**
    - negotiation skills gained by 35 years of acting as a judge, highly familiar with legal aid system, access to courts
    - Strengthening of Judicial Institutions (Courts, Judicial Training Centre)

- Experience in the main branches of Private Law; specialized to problems of liability of the state, problems of expropriation and compensation,
- court administration(distribution of business plans, assessments of judges), institution building
- familiar with the problems of countries in transition in various legal fields
- long years of practical judiciary reform assistance towards a legal system ruled by the principle of law
- training experiences with students and jurists, creating of curricula,
- participatory rights of judges; representation of judges
- balancing of judicial independence and supervision of the administration; (dealing with disciplinar complaints)
- selection orders for delegating of judges to continuous trainings, recruitment of personal, increasing of effiency of work
- experience with the establishment of a comprehensive legal aid system in Kosovo
- long experience as a civil judge with settlements and alternative Dispute Resolutions (having acted as chairmain of a " Schiedsgericht", president of a disciplinary court and

on extrajudicial attemps to reconciliate parties in devorce- proceedings: together with

experts for marriage counselling.

13. Specific Countries experience

Country	Date from - Date to
Romania	15.01 up to 150 working days
Macedonia	21.07. 06 to 22.11.06
Malta	March and May 2006
Kosovo	1.04.2002 – 22.12.2004; 1.8. 2005- 22.February 2006
Croatia	December 2004 and March ad April 2005
China	October 2000 (study- trip for lawyers)
Vietnam	November 2000 (study trip for lawyers

4. Professional experience record

Date:	01/2007 up to 150 working days
Location:	Bucharest / Romania
Company:	B & S Europe
Position:	Key expert for training of judges and prosecutors
Description:	• technical support for the National Institute for Magistrates • organization of trainings, conferences and workshops • elaboration of manuals

Date:	07 – 11/06
Location:	Skopje / Macedonia
Company:	Progeco and B&S Europe
Position:	Training expert

Description:	• Development of a training analysis and a strategy for training for the Magistrates School

Date:	06/2006
Location:	Pristina/ Kosovo
Company:	IRZ foundation
Position:	Evaluator of the legal aid system in Kosovo
Description:	• Evaluation of the Legal Aid system in the western Balkans

Date:	03 – 05/06
Location:	Valetta / Malta
Company:	German Foundation for Legal Cooperation (IRZ)
Position:	Short term expert for training analysis and strategy
Description:	• Development of a training analysis and a strategy for training for the Magistrates School

Date:	08/2005 – 02.2006
Location:	Pristina, Kosovo
Company:	ICON-INSTITUT Public Sector GmbH
Position:	Key expert for Institution Development
Description:	• Representation of the project on " Establishment of a comprehensive Legal Aid System by the consortium led by ICON towards the beneficiary and all relevant implementation partner • Responsible for the activities and results of project component V "Design and Implementation of Information and Training Activities" • Coordination and monitoring all activities within this component; constant evaluation of training activities • Training Needs Analysis and Development of a Professional Development Programme ("PDP") • Establishing contacts to other institutions such as KJI, KPS, Kosovo Chamber of Advocates, etc. • Drafting of training curricula, pedagogical tools, etc. with special attention to minority protection and gender equality • Implementation of Training for trainers-activities • Consulting the Special Representative of the Secretary General for Kosovo in drafting the legal basis for Legal Aid; • Information campaign in the municipalities and to NGO on the drafted legal Aid bill. • Training and information of judges and lawyers on the draft of the Comprehensive Legal Aid System

Date:	10-12/2004 and 03-04/2005
Location:	Zagreb, Croatia
Company:	ICON- INSTITUT Public Sector GmbH
Position:	Short term legal expert
Description:	Substantial assistance in preparation and compilation of a complete

	training module for the following workshops / legal subjects ("tutor's briefcase") in cooperation with Croatian legal experts: • Workshop „Costs Orders in Civil Procedure (incl. Value in Dispute)" • Workshop „Techniques of Writing Civil Law Verdicts" • Workshop "Preparation and conduction of main hearings in civil law cases"

Date:	04/2002 – 12/2004
Location:	Pristina, Kosovo
Company:	OSCE
Position:	Judicial Officer at Kosovo Judicial Institute
Description:	Training of national trainers; member of the Kosovo Judicial Council, selection of candidates for judicial positions and member of the Disciplinary Chamber

Date:	September 1993 –March 2002
Location:	Jena / Germany
Company:	State Thuringia (Justice)
Position:	Presiding Judge at the Higher Regional Court
Description:	Head of Court of Appeal in civil matters; decisions on requests for legal aid

Date:	October 1991 – September 1993
Location:	Gera
Company:	State Hesse seconded to State Thuringia
Position:	District Court, leading judge
Description:	• Member of Panel for rehabilitation and for criminal trials, responsible for training of colleagues from the former GDR judiciary system, training on the job

Date:	1980 – September 1991
Location:	Kassel
Company:	State Hesse
Position:	President of a Court chamber for Private Law at the District Court (2nd instance)
Description:	Training of judges' assistants ("Rechtsreferendare"), Decision on requests for legal aid in civil procedures

Date:	1975 – 1980
Location:	Kassel
Company:	State Hesse
Position:	President of a Panel at the District Court (2nd instance)
Description:	Responsible for: Criminal Law (Court of Appeal), President of a panel for commercial law, Training of judges' assistants ("Rechtsreferendare"). Decisions on granting a defender for accused needing a lawyer

Date:	1974 – 1975
Location:	Frankfurt/Main
Company:	State Hesse
Position:	Judge at the Supreme Court of Hesse
Description:	Responsible for: Criminal Court appeals, Training of young jurists, Co-operation of court with law faculty

Date:	1969 – 1974
Location:	Kassel / Germany
Company:	State Hesse
Position:	Judge at the Municipal Court
Description:	Responsible for: Criminal and Civil(Private) Law Cases

15. Other relevant information:

Publications: Different publications in the" Newsletters" of the KJI in Kosovo, especially about the " Independence of Judges"

CURRICULUM VITAE

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Personal information	
First name / Surname	**VIOREL VOINEAG**
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E-mail	voineag09@yahoo.com; vvoineag@inm-lex.ro
Nationality	Romanian
Date of birth	09.11.1976
Gender	Male
Martial Status	Married, one child

Work experience	
01.08.2006	Judge - The Bucharest Court of Appeal – Section IX- Civil Law and Cases on Intellectual Property
01.02.2006-05.08.2006	
01.05.2004-01.08.2006	Trainer seconded to the National Institute of Magistracy – Ethics and Judicial Organisation
01.10.2004	Judge – The Bucharest Court – Section V- Civil Law
01.02.2006	Trainer in initial and life-long training at the National Institute of Magistracy- Ethics and Organisation
01.10.2005	
01.04.2002-41.04.2004	Trainer- The National Institute of Magistracy- The Methodology of the Legal Act
09.2000-31.03.2002	Trainer in initial training- The National School of Clerks- Deontology
	Judge – Law Court of Bucharest, Sector 2
	Judge- Law Court in Bacau

Education and training	
1999-2000	THE NATIONAL INSTITUTE OF MAGISTRACY
1995-1999	The Law Faculty- Bucharest University
1991-1995	“Al.I.Cuza”/”Unirea” High School- Focsani

Published Works

1. Multiple Choice Tests for Admission into the Magistracy, All Beck Publishing House, first edition – July 2000, second edition – February 2001;
2. Multiple Choice Tests for Examining Lawyers – Entrance Examination and Professional Appointment Examination, All Beck Publishing House, 2001;
3. Multiple Choice Tests for Lawyers’ Graduation and Entrance Examinations, *Civil Law, Proceedings Law, Criminal Law, Criminal Proceedings Law*, All Beck Publishing House, 2002;
4. Multiple Choice Tests for the Magistracy, the Lawyer’s Profession and the Graduation Examination, *Civil Law, Civil Proceedings Law, Criminal Law, Criminal Proceedings Law*, All Beck Publishing House, 2004;
5. Collection of Test Cases for the Magistracy and the Lawyer’s Profession, All Beck Publishing House, 2005;
6. Multiple Choice Tests for the Magistracy, the Lawyer’s Profession and the Graduation Examination, Juristest Publishing House, first edition -2006, second edition- 2007.

Other Activities

01.10.2004
April 2005-April 2007

2006-2007
2004-2005

01.10.2005
February 2006

Trainer in initial training – The National Institute of Magistracy – Ethics and judicial organisation;

Participation as trainer in the seminars of lifelong training of exceptionally recruited magistrates in Ethics and Professional Deontology;

Participation as trainer in the seminars for trainers' training in various fields, lecturing on "Teaching skills in the training process";

Participation in the seminars organised by the National Institute of Magistracy as part of the Phare Twinning Programme between the Netherlands and Romania and presentations on the Intellectual Property Law, the Role of the Magistrate in a Democratic Society, Communication in Court, meant to train trainers in the respective fields;

Trainer in initial training at the National School of Clerks – Deontology

Trainer with the National Institute of Magistracy in the Methodology of the legal act

Personal skills and competences

Mother tongue: Romanian

Other language(s)

	Understanding				**Speaking**				**Writing**	
	Listening		Reading		Spoken interaction		Spoken production			
French		Advanced		Advanced		Advanced				Advanced
English				Intermediate		Intermediate				Beginner

Social skills and competences: Optimism, spontaneity, perseverance, good communication skills

Organisational skills and competences: Good capacity to synthesise and analyse

Computer skills and competences: Microsoft Word, Windows Explorer

LIST OF PARTICIPANTS

The Technique of Drafting Judgments– Part I: Civil Law Judgments
October 17-19, 2007
Bucharest, Romania

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BULGARIA	IANACHKOVA, MARIA KRASTEVA	Judge, Sofia City Court	Phone.: +359 2 9219 559 Fax: +359 2 9359 101 E-mail: ianachk_m@yahoo.com
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CROATIA	BUMČI, KORALJKA	Judge, MUNICIPAL COURT IN ZAGREB	Phone: 00 385 (0)98 742 118 Fax: E-mail: koraljka.bumci@zg.t-com.hr
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Rule of Law Program South East Europe –
Konrad Adenauer Foundation

The Rule of Law Program South East Europe of the Konrad Adenauer Foundation is designed as a program to promote dialogue on rule of law issues within and among the countries in South East Europe. It aims to support, in a sustainable manner, the establishment and consolidation of a democratic state of the rule of the law. Program participant countries are Bosnia-Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro, Romania, and Serbia. In these countries, the Rule of Law Program wishes to contribute to the development and solidification of an efficient legal order and a justice system that is in accordance with the fundamental principles of the rule of law. As such, both are core elements of a democratic system, and a prerequisite for membership in the European Union.

The Rule of Law Program South East Europe focuses on the following five areas:

- Constitutional Law (both institutional and substantive) and Constitutional Jurisprudence
- Procedural Law
- Protection of Human and Minority Rights
- Independence and Integrity of the Justice System
- Reconciliation with the Past by Legal Means.

Within these areas, the Rule of Law Program organizes seminars, training sessions, and conferences at the national and regional levels. In addition, the Program prepares publications for guidance, education, and reference for future projects and studies.

Contact info:

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